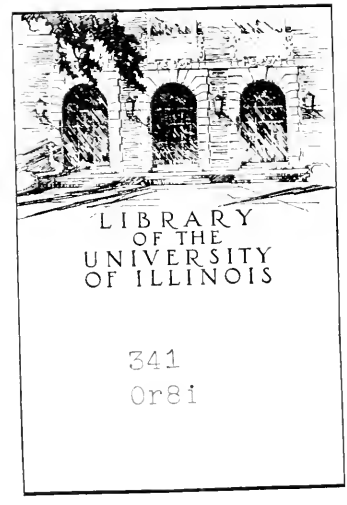

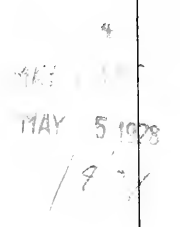

THE INTER-AMERICAN COLLECTIVE SECURITY SYSTEM AND THE CUBAN CASE

BY

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CHAPTER ONE

The complexities of today's international relations in the Western Hemisphere seem to support the relativistic idea that collective security, as envisaged in the inter-American system, is nothing but a reflection of the "interplaying issues" which shape the member-countries' foreign policies. By interplaying issues we mean two things. First, we refer to the social, economic and political forces which combine with each other to differentiate Latin America, as an area undergoing transition, from other transitional societies in Asia and Africa. Second, we refer to the position of the United States in the Western Hemisphere as a modernized society playing a world role including its membership in the inter-American system. The particular aspects which characterize the inter-American collective security system are a by-product of these two interplaying issues.

The primary characteristic of the historical development of the "collective security" system since the Congress of Panama in 1826 has been a unilateral approach to the security of the Hemisphere by the United States.[1] Although a de jure multilateral approach was partially stipulated in major inter-American Conferences before 1936, the reality was a de facto dependability for security on

the arbitrary, unilateral application of the United States' Monroe Doctrine. This unilateral approach by the United States has remained as one of the major factors which have shaped the Latin American countries' foreign policies in matters pertaining to security. These foreign policies have been characterized by the pursuit of both general and specific objectives in order to maximize each country's power, general gains and specific pay-offs. For this reason, the nationalistic aspirations of the Western Hemisphere states began since 1890 to clash with truly multilateral approaches, such as the adoption of policies taken on a common basis with the necessary compromises among the participating states, needed for the establishment of a valid collective security system. Since the inter-American international decision-making process was affected by power politics, the balance of such power obviously depended on the overwhelmingly strongest state, the United States. Thus the unilateral approach to security by the United States.

With the slow but solid development of the inter-American system in all of its aspects, the foregoing notion of "unilateralism" began to undergo a shift toward multilateralism. Although this new shift barely evoked the necessary minimum compromises which the member-states had to make in order to permit formation of a true collective security system, it was nevertheless a step forward. This

pattern of "minimum compromise" began to gain its original strength in the resolutions of the Inter-American Conference for the Maintenance of Peace, held in Buenos Aires from December 1 to December 28, 1936. The convocation of the Conference was the consequence of a direct appeal by Pres. Franklin D. Roosevelt in a personal letter addressed to the heads of states of the Latin American countries which requested them to consider "their joint responsibility and their common need" in the prevention of conflict and the permanency of peace.[2] Such an appeal by the President of the United States showed the preoccupation of Franklin D. Roosevelt's Good Neighbor Policy to share with the Latin American states the maintenance of security in the Hemisphere. Future events would demonstrate, however, that both the United States and each of the Latin American states reserved the right to interpret the meaning of "security" according to its own stakes involved in specific situations. On the other hand, by calling a Conference -- probably as a direct consequence of the failure of the then existing inter-American peace machinery to solve the Chaco War -- in order to discuss common interests <u>at the same level</u>, the United States for the first time paid more than lip-service to the traditional concept of judicial equality of the American states accepted by inter-American regional international law.

The Buenos Aires Conference, like later inter-American meetings, dealt with other matters of common

interest besides those pertaining to security and peace, such as mediation and prevention of controversies. For our purposes, the main contribution to the beginning of the collective security machinery came from the "Committee on the Organization of Peace," under the chairmanship of Dr. Francisco Castillo Najera, head of the Mexican delegation to the Governing Board of the Pan American Union. This Committee drafted and prepared the Convention for the Maintenance, Preservation and Re-establishment of Peace (also known as the Consultation Pact). Besides providing a definition of the meaning of collective interest in the inter-American system, this Convention introduced an important notion in the procedural mechanism of the collective framework -- the procedure of consultation. Although the consultation mechanism was proposed, it was not then officially established, even though the North American delegation had suggested the creation of a Permanent Inter-American Consultative Commission composed of the foreign ministers of the American states.[3]

Article I of the Convention was an adaptation of an earlier Brazilian "Project for an Inter-American Pact for Collective Security" calling for mutual consultation "in the event that the peace of the American Republics is menaced." Although the principle of consultation was little more than a pious statement which did not imply any sort of legal commitment, its theoretical acceptance by the contracting parties reveals a new approach to security and

the development of a collective framework through a search for multilateralism. As one expert said, ". . . in spite of the very guarded language of the Convention, the agreement to consult which it contains constitutes an important contribution to the machinery for collective action on the part of the American Republics."[4]

This new trend to "multilateralism," as exemplified by the procedure of consultation, has elicited the question of whether or not the Monroe Doctrine was "Pan-Americanized." It was suggested that because peace and security were matters of concern for all the American Republics, and not just for the United States, the Monroe Doctrine was therefore Pan-Americanized. According to Connell-Smith, a Peruvian delegate commented that; ". . . the Monroe Doctrine vanishes; we see it disappear without noisy farewells, to be replaced by this cooperative formula for our America, in which we affirm and declare that the defense of our Continent is intrusted to our own countries, our means and resources."[5]

But later events suggest that the fact that the Latin American nations had available a new means of implementing measures regarding a hypothetical threat to security and peace did not mean that such consultation procedure made the Monroe Doctrine the common doctrine of the American states.

Article II of the Convention for the Maintenance, Preservation and Re-establishment of Peace at Buenos Aires read:

> In the event of war, or a virtual state of war between American states, the Governments of the American Republics represented at this Conference shall undertake without delay the necessary mutual consultations, in order to exchange views and to seek, within the obligations resulting from pacts above mentioned and from the standards of international morality, a method of peaceful collaboration; and, in the event of an international war outside America which might menace the peace of the American Republics, such consultation shall also take place to determine the proper time and the manner in which the signatory states if they so desire, may eventually cooperate in some action tending to preserve the peace of the American continent.[6]

The Convention and the principle of consultation also were supported by the Declaration of Principles of Inter-American Solidarity and Cooperation, an enumeration of already accepted principles which were collected and offered as a single document by the Central American delegations.[7]

Indeed, the Buenos Aires Conference provided the first pillar in the structuring of a formal security system. However, its resolutions were vague, the procedure of consultation was no more than a suggestion, and no specific provisions were made concerning how to determine in a given case who was the violator of security and under what circumstances, besides those already stipulated in traditional inter-American law, a threat to security would be considered as perilous. Further experience under this machinery showed that the pragmatic validity of inter-American resolutions was very weak unless specific provisions, clearly showing the culpability of the law-breaker, were approved and ratified by the member-countries. This was

reflected in a theoretical adherence to the principles of international law but accompanied by a reluctance to apply specifically-defined provisions when demanded by the seriousness of particular circumstances.

Although the new stage which was initiated at Buenos Aires in 1936 still lacked a clearly-defined interpretation of the meaning of security, the willingness of the American states to face threats to security in a common, mutual basis pave the way for further refinements of the collective security system.

Two years later the Eighth International Conference of American States was held in Lima, from December 9 to December 27, 1938. The Lima Conference met under the shadow of the rapid events which were taking place in the European theater. The threat of war was imminent.[8] In this atmosphere the participants tried at Lima to refine and expand both the meaning and the tools of the collective security system which had been considered at Buenos Aires. An attempt was made to close the gaps in the system by drafting the "Declaration of the Principles of Solidarity of America," also known as the Declaration of Lima. As Dr. Fenwick puts it, ". . . the Declaration of Lima attains its great significance both in respect to the new direction which it gives to the policy of the U. S. toward Latin America and in respect to the new system of regional collective security which it establishes."[9]

Most important, the Declaration of Lima gave formal status to the consultation procedure suggested at Buenos Aires through the institutionalization of the Meetings of Ministers of Foreign Affairs. Article III of the Declaration of Lima read as follows:

> In the case the peace, security and territorial integrity of any American Republic is thus threatened by acts of any nature that may impair them, they proclaim their common concern and their determination to make effective their solidarity, coordinating their respective sovereign wills by means of the procedure of consultation established by the conventions in force and by declarations of inter-American conferences, using measures that in each case circumstances may make advisable.[10]

Although in general the Declaration of Lima followed the same vague path paved at Buenos Aires, it added a somewhat more positive and stronger tone to the Declaration's solidarity provisions. Likewise, at Lima a certain degree of specificity was achieved by expanding the notion of threat to include subversive activities. By the same token, an attempt to define intangible threats in more particular teminology was the purpose of two of the Declaration of Lima corollaries, "The Declaration Concerning Foreign Minorities" and the "Resolution Relating to Political Activities of Foreigners."[11] Unlike the Buenos Aires Consultation Pact, the Declaration of Lima was not a formal convention, but rather an agreed-upon general declaration. The Declaration thus lacked any legal binding power and was very far from establishing the theoretical compulsory obligation of a ture collective security system.

The minimum compromise which the American governments were willing to undertake in order to form such a system seems to have rested -- as long as the European threat to security was not pressing -- on a reconciliations of issues, particularly between the United States and the Latin American governments. For example, to the Latin American governments the issue of external threat was less paramount than was the actual preponderance of the United States influence within the inter-American system. At this time the Latin American governments were more preoccupied with restraining the United States' implicit superiority through the adoption of legal provisions than in possible future European threats.

The meaning of collective security therefore reflected externally the impact of the internal interplaying issues affecting the system. As we have suggested, these issues were reconciled, at this particular stage of development in the so-called "evocation of reciprocity" formula.[12] That is, the promise by the United States of economic aid and of adherence to the principle of non-intervention evoked a reciprocal policy by the Latin American governments in the form of continental solidarity to implement the overall development of protective American foreign policy against the Axis powers.

Despite the Lima contributions to the evolving mutual security system, it suffered from several technical deficiencies. So far the Declaration and its provisions

were mostly of a recommendatory nature, lacking the legal consensus imposed by mandatory provisions. Also the definition of "aggression" and the measures which would follow such aggression suffered from the ad hoc basis of the consultation procedure. That is, there were no previously agreed upon legal terms which could be applied to condemn the aggressor and thus avoid political impasses. On the other hand, this avoidance of technical rigidity supplied flexibility to the consultation procedure by widening the potential scope of the Meetings of Ministers of Foreign Affairs. Finally the overall agreement by the American governments on matters of "principles" was counterbalanced to some degree by their tendency not to compromise on more detailed security arguments, which ultimately were regarded as an infringement on their freedom of action. Thus the vagueness of the provisions.

With the worsening of the European situation, the emerging inter-American collective security system suffered its first test. The development of war in Europe during 1939 indirectly affected the external and internal security of the Hemisphere, so the body of law accepted at Buenos Aires and Lima pertaining to security was tested. The first use of the consultation procedure was requested by the delegation of Panama, resulting in the First Meeting of Ministers of Foreign Affairs, which was called immediately after the outbreak of hostilities in 1939, in order to consider the neutrality of the American Republics as well as to study

issues germane to their own security. This showed that the American governments -- primarily the Latin American governments -- would pay most careful attention to those issues which they perceived as involving a real threat to security.

The First Meeting of Consultation was held in Panama from September 23 to October 3, 1939. The Meeting gains its importance from the Declaration proclaimed at that session. The Declaration of Panama proclaimed a neutrality zone that extended the traditional three-mile maritime limit to an average of about three-hundred miles.[13] It was not the extension per se that added a new perspective to the collective security system but the fact that the American Republics were by their action superimposing a new interpretation of regional inter-American law upon the old pattern of general international law. Again, the question was not whether the American Republics had the legal or judicial right to do so but the fact that the issues of security were regarded as important enough to supersede general international law.

The Declaration of Panama has been criticized on the grounds that it created, by virtue of this superimposition, new rights for the American Republics, rights conflicting with or reducing the binding power of already established positive international law.[14] The practical validity of such superimposition was challenged by the sea battle involving the German battleship "Graf Spee" and two British cruisers within Uruguayan territorial waters. This violation

of the recently stipulated Declaration of Panama can be regarded as the first direct challenge to the inter-American collective security system by extra-continental powers. Beyond the sending of protest notes to the involved parties, no other measures were taken by the American Republics acting within the collective security framework.

It had been agreed at Panama to call a Second Meeting of Consultation in Havana on October 1, 1940. The events in Europe, particularly the fall of France, forced the Meeting to be celebrated at an earlier date, due to the seriousness of the war situation. The Second Meeting of Ministers of Foreign Affairs took place in Havana from July 21 to July 30, 1940.[15] At the preceding Meeting at Panama security had been ill-defined, so the Second Meeting concentrated on a more specific study of the measures which could be undertaken for hemispheric defense. The fact that at the Havana sessions the Latin American governments were willing to study and eventually accept a more detailed plan of defense supports the idea that such responses were elicited when the threat of the issue involved was more real.

The most important resolutions of the Second Meeting resulted from proposals made by the Committee on Preservation of Peace. The degree of specificity of these resolutions, in contradistinction with the vagueness of the provisions adopted at Buenos Aires, Lima, and even Panama,

demonstrates the keen interest of the American governments in refining and making more precise the existing instrumentality for collective security. The decisions made included: Resolution II, "Norms Concerning Diplomatic and Consular Functions"; Resolution III, "Coordination of Police and Judicial Measures for the Defense of Society and Institutions of each American State"; Resolution V, "Precautionary Measures with Reference to the Issuance of Passports"; Resolution VI, "Activities Directed from Abroad against Domestic Institutions"; Resolution VII, "Diffusion of doctrines tending to place in jeopardy the common inter-American democratic ideal or to threaten the security and neutrality of the American Republics." Concerning this last Resolution, it should be emphasized that the member-countries of the inter-American system were pre-supposing the "democracy" to be the political form of government.[16]

The most far-reaching of all the Resolutions was Resolution XV, "Reciprocal Assistance and Cooperation for the Defense of the Nations of America." The first paragraph of the Resolution read as follows:

> The Second Meeting of Ministers of Foreign Affairs of the American Republics declares: That any attempt on the part of a non-American state against the integrity or inviolability of a territory, the sovereignty, or the political independence of any American state, shall be considered as an act of aggression against the States which sign this Declaration.[17]

Although the "aggressor" or would-be aggressor was mentioned simply as non-American, there was no doubt that

the reference was directed in this context to the Axis powers. The text of Resolution XV seems to have been so important for the formalization of the collective security system that it can be regarded as the major basis for the Inter-American Treaty of Reciprocal Assistance of 1947, the corner-stone of the present system. As Prof. Whitaker comments,

> . . . this Declaration marked a considerable advance over the mere expression of common concern contained in the Lima Declaration, for while it fell short of creating a true system of collective security through its failure to stipulate a general and reciprocal obligation to defense, it did at least set up a legal framework for effective cooperation.[18]

The Havana Conference provided a new perspective to the legal underpinning of the security system. As has been suggested, Resolution VI reinforces the binding power of the Declaration by introducing a new mandatory basis rather than following the old basis of traditional recommendatory provisions.[19]

The First and Second Meetings of Consultation at Panama and Havana, respectively, tested the speed and effectiveness of the consultation procedure. Moreover, the degree of cohesion which existed, as mirrored in the Resolutions accepted, showed that the American governments were willing to acquiesce on issues relevant to their security.

The events which took place on and immediately after December 7, 1941, led the United States government to address a letter to the Latin American governments calling

to their attention the far-reaching importance of the new threat to the security of the Hemisphere. Immediately afterward, the Foreign Minister of Chile, Sr. Rosetti, addressed a communique to the Chairman of the Governing Board of the Pan American Union calling for a Third Meeting of Consultation of Ministers of Foreign Affairs. The Meeting was held from January 15 to January 28, 1942, in Rio de Janeiro, in order to deal with the necessary measures needed to protect the Western Hemisphere.[20] One-half of the proposed agenda referred to the question of "Protection of the Western Hemisphere." This important topic was assigned to working Committee Number One, which was chaired by able Sr. Aranha from Brazil, also President of the Meeting.

The over-all topic was subdivided into two major areas: 1) the study of the measures necessary to curb the activities of foreign aliens, and 2) the measures which might be undertaken by the American Republics in the reconstruction of the world order. Before describing the development of the Meeting, it is important to point out the emerging dimensions which were related to the collective security and how these dimensions gradually had been evolving from utopian and general declarations of continental solidarity to specific measures of internal security. Because of the threat posed to internal security by the increased informal or covert penetration of the Axis powers, the idea of collective security -- primarily to the Latin American

governments -- seems to have been focused on the need for internal, rather than external, protection of each country. This preoccupation shifted the emphasis of protective resolutions to the internal political situation of the country. The importance of this shift in the Latin American conception of security lies in their acceptance of the implied relationship between the internal political environment and the external legal environment. This relationship brought the national politico-judicial system into contact with the corpus of inter-American law.

This meant that when inter-American law, assuming a body of provisions which were equally applicable to all under the concept of judicial equality of the sovereign state, came into contact with the specific political problems in a particular country, the consequence of such contact was usually a confrontation between irreconciliable legal rules. This conflict usually has been solved in one of two ways: 1) either the nation-state makes the necessary changes at the domestic level in order to satisfy the demands of inter-American law, or 2) the nation-state rebutts the demands of inter-American law by refusing to recognize its jurisdictional validity. The history of inter-American law registers a great number of cases where the above pattern was applied.

At the time the Third Meeting of Consultation was held, the record shows a clear difference of interpretation between the generally-accepted inter-American provisions of internal security and the view of the Argentine Republic. In this case, the Argentine Republic refused to accept the internationally approved provisions and, in refusing, undermined the unanimous acceptance of the measures of the collective security system. A similar pattern exists today in the inter-American system concerning Mexico vis-a-vis the Cuban case. This is a matter of importance in the present study which must be considered below.

The Third Meeting of Consultation at Rio highlighted the new shift to internal security concerns by creating a series of new inter-American agencies and measures in order to deal with the relevant internal problems. Likewise an attempt was made at Rio to find a judicial definition of "aggression" which included non-military acts. Proposition Number 22, proposed by the United States delegation, pertains to this matter. The interest of the Latin American governments in specific measures was noticeable. For example, Resolution XVIII called for an inter-American conference for the "Coordination of Police and Judicial Measures." Resolution XIX, the "Coordination of the Systems of Investigation," was proposed by the Panamenian delegation.[21]

Two innovations were important. Project Number 57, proposed by the Paraguayan delegation, and included in

Resolution XVII, led to the formation of the Emergency Advisory Committee for Political Defense, with its seat in Montevideo. Secondly, Haitian project Number 47 and Uruguayan project Number 59 were condensed in Resolution XXXIX, calling for the establishment of the Inter-American Defense Board in Washington.[22]

The Emergency Advisory Committee for Political Defense was an outstanding contribution to the structuring of the security system on a collective basis. The Committee consists of a seven-man board responsible for coordinating defense measures. It was a policy-implementing mechanism -- not a policy-making body -- to the extent that it implemented the measures agreed at the Meetings of Consultation. For this reason, the Committee for Political Defense has been regarded as an extension of the Meetings of Consultation. The Committee acted as a coordinating mechanism, through liason officers representing their respective countries. Likewise, the Committee used two complementary tools to integrate more fully the efforts of common defense by encouraging national interdepartmental committees of political defense and general or regional meetings of defense officials.

The most durable contribution of the Committee was the "representative principle" under which it operated. The Committee included representatives of seven countries: Argentina, Brazil, Chile, the United States, Mexico,

Uruguay and Venezuela. According to its by-laws, these seven-men represented the interests of the rest of the member-states on matters pertaining to security. Such a limited membership agency, based on the principle of collective representation, was indeed a far-reaching innovation within the collective security system. The fact that a seven-man Committee was able to recommend measures in the name of the other member-states is a procedural arrangement which avoids the built-in impasses and deadlcosk of massive consultative meetings, which usually require unanimous agreement on each measure. Its advantages are so numerous that future reforms of present inter-American committees should study the conveniences of this principle.

In general, the Committee's structure was a proper and intelligent solution for some of the difficulties underlying the security system. Also the establishment of the Committee through Resolution XVII of the Third Meeting of Consultation seems to be a practical response to the plea for collective security previously stipulated in Resolution XV of the Second Meeting of Consultation at Havana. As the United States delegate to the Committee put it:

> The Committee was created in a moment of great danger to the Americas, when the effectuation and coordination of measures for joint defense against a constantly changing type of attack from within was an imperative practical

> necessity, not a mere matter of convenience in the accomplishment of a desirable objective of international cooperation.[23]

With the inplementation of the decisions reached at the Third Meeting of Consultation at Rio de Janeiro in 1942, the inter-American collective security system had evolved much more solid structures than the original ephimeral goals enunciated at Buenos Aires six years before. Indeed a substantive meaning was given to collective security in the form of specific resolutions; a procedural mechanism was established by the principle of consultation; and the Meetings of Panama, Havana and finally at Rio tested the possibility of implementing resolutions and the practicability of the procedural mechanisms developed. Finally, the reality of the early ideal goals made a reality of the so-called "Brum Doctrine" and the philosophy behind a system of collective security dedicated to the maintenance of peace in the Western Hemisphere.[24] A fine evaluation of the system was given by Dr. Fenwick; as he puts it:

> The almost mystical meaning which the words continental solidarity have come to acquire is not to be dismissed as mere rhetoric. Step by step, from Buenos Aires in 1936 to Rio de Janeiro in 1942, they have been given clear definition and more specific applications to concrete situations. As strictly legal obligations, the terms of the several agreements constituting continental solidarity are clearly far short of binding commitments of regional collective security, in the sense that they do not provide for concrete ways and means in the event of the occurrence of specified situations.[25]

The system lacked formalized authority based on judicial consensus which would provide more binding legal capacity to the resolutions adopted at the Meetings of Consultation. In general the capacity of the Meeting of Consultation is described as:

> . . . though chiefly mediatory, it is designed to be, and is, inherently strong, given a sufficiently grave situation . . . Indeed if there is sufficient determination effectively to use the new system, a consultative meeting can exercise enormous power in dealing collectively with defense matters . . .[26]

The dynamism of the procedure of consultation outpaced the rather stable tempo of evolution of the legally binding forces behind its resolutions.[27] This lag in development created an unbridgeable gap in the system which eventually became the major failure of the inter-American collective security system.[28]

Footnotes for Chapter I

[1]Yepes, Jesus M. Del Congreso de Panama a la Conferencia de Caracas. 2 Volumes, Caracas, 1955.

[2]Fenwick, Charles. "The Inter-American Conference for the Maintenance of Peace," American Journal of International Law, Vol. 31 (1937), pp. 201-225.

[3]Ibid., pp. 201-225.

[4]Ibid., p. 204.

[5]This idea of "Pan-Americanization" is accepted in the writings of both Fenwick and Whitaker. Says Whitaker: "So widespread and deeply rooted was the Hemisphere sentiment which stimulated this tendency that the first formalization of continental security (which was accomplished in 1936 by the so-called Pan-Americanization of the Monroe Doctrine at the Buenos Aires Conference was followed within three years by a close approach to Hemisphere isolation." Whitaker, A., The Western Hemisphere Idea, Cornell University Press, 1954, p. 149. Connell-Smith, on the other hand, opposes the idea that the Monroe Doctrine was Pan-Americanized; see Connell-Smith, Gordon, The Inter-American System, Oxford University Press, 1966, especially pp. 98-101.

[6]Fenwick, Charles. The Organization of American States, Kaufman Printing, Washington, 1963, p. 61.

[7]Article II of the Declaration read: "Every act susceptible of disturbing the peace of America affects each and everyone of them (the nations) and justifies the initiation of the procedure of consultation provided for in the Convention for the Maintenance, Preservation and Re-establishment of Peace."

[8]Fenwick, Charles: The Organization of American States, Ibid., See Chapter VII.

[9]Fenwick, Charles. "The Monroe Doctrine and the Declaration of Lima," American Journal of International Law, Vol. 33, 1939, p. 257.

[10]Mecham, Lloyd. The United States and Inter-American Security, University of Texas Press, 1965, p. 142.

[11]Fenwick, C. "The Monroe Doctrine and the Declaration of Lima," Op. Cit.

[12]Connell-Smith, Gordon. Op. Cit., pp. 98-101.

[13]Fenwick, Charles. "The Declaration of Panama," American Journal of International Law, Vol. 34, 1940, pp. 115-119. Article I of the Declaration of Panama read: "As a measure of continental self-protection, the American Republics, so long as they maintain their neutrality, are as of inherent right to have those waters adjacent to the American continent, which they regard as primary concern and direct utility in their relations, free from the commission of any hostile act by any non-American belligerant nation, whether such act be attempted or made from land, sea or air." International Conciliation, Documents for the year 1940, No. 356, January 1940, p. 28.

[14]Fenwick, C. "The Declaration of Panama," Ibid, pp. 115-119.

[15]Mecham, Lloyd. The United States and Inter-American Security, Op. Cit., See Chapter VII.

[16]Fenwick, Charles. "The Third Meeting of Ministers of Foreign Affairs at Rio de Janeiro," American Journal of International Law, Vol. 36, 1942.

[17]International Conciliation, September 1940, Number 362, Text of the Second Meeting of Ministers of Foreign Affairs.

[18]Whitaker, A. "A Half Century of Inter-American Relations: 1889-1940," Inter-American Affairs, New York, 1942, p. 35.

[19]Bunce Couiles, Willard. "Joint Action to Protect an American State from Axis Subversive Activities," American Journal of International Law, Vol. 36, 1942, pp. 242-251.

[20]Gomez, Mario. Derecho Constitucional Interamericano, Quito, 1964, See 1st volume.

[21]Fenwick, Charles. "The Third Meeting of Consultation of Ministers of Foreign Affairs," Op. Cit.

[22]Spaeth, C. and W. Sanders. "The Emergency Advisory Committee for Political Defense," American Journal of International Law, April 1944, pp. 218-241.

[23]Ibid., p. 221. Because of its temporary character, the Advisory Committee for Political Defense was dissolved on November 3, 1948.

[24]Fernandez-Shaw, Felix. La Organizacion de Estados Americanos, Madrid, Ediciones de Cultura Hispanica, 1959. See Chapter III. Baltazar Brum declared in 1917 as Minister of Foreign Affairs of Uruguay that any act perpetrated against any of the American States, in open violation of international law, constitutes a problem of common concern.

[25]Fenwick, Charles. "The Third Meeting of Consultation of Ministers of Foreign Affairs at Rio de Janeiro," Op. Cit., p. 200.

[26]Bunce, W. "Joint Action to Protect an American State from Axis Subversive Activities," Op. Cit., pp. 245-246.

[27]Sanchez de Bustamente, Antonio. "The Pan American Consultative System," Tulane Law Review, February, 1939, p. 326.

[28]Kirchberger, Hans. "The Significance of Roman Law for the Americas and its Importance to Inter-American Relations," Wisconsin Law Review, Number 4, July, 1944, pp. 249-272. After establishing the notion that any project of codification of inter-American law should be based on a comparative study of Roman Law in the Western Hemisphere, he suggests that such uniformity could contribute to a more real appraisal of the juridical problems of inter-American law.

CHAPTER TWO

The inter-American collective security system underwent its major changes from 1945 to 1948. In the span of three years, three inter-American conferences and a world conference speeded up the evolutionary process. These conferences were, in chronological order, the Mexico City Conference of 1945, the San Francisco Conference of the same year, the Rio de Janeiro Conference of 1947 and finally, the Bogota Conference of 1948.

Intricate machinery resulted from these four conferences, giving a formal organizational structure to the resolutions and provisions which had evolved since Buenos Aires in 1936. So many far-reaching issues were discussed and such variety of what once were regarded as utopian goals became now a reality that one wonders whether the jurists at Buenos Aires could have conceived of the consequences resulting from their vision of a collective security system encompassing the wide range of problems which characterize inter-American affairs.[1]

By the end of World War II the Latin American governments, as revealed by their attitudes at these four conferences, fully embraced the role of international law in regulating inter-American affairs. When such a juridical approach to inter-American problems is followed, a point of contact is established implicitly between the body of

inter-American law and the internal political situation under the law's jurisdiction. One consequence of this situation is that the respectability and binding power of inter-American law is indirectly related to the state of affairs within the Latin American countries. Thus a strain upon this relationship occurs whenever the body of inter-American law is expanded.

The negotiators who arranged the expansion of the inter-American collective security system which resulted from these four conferences failed to foresee that the preservation of peace through a collective security mechanism depends partially on the state of internal affairs of the member-states.

This expansion resulted from: 1) the integration of the inter-American collective security system into the United Nations, and 2) the renewed attempt to give a juridical definition to the different kinds of situations which might threaten the permanency of peace. This juridical definition specified the circumstances, the involved actors and the procedural mechanisms which the inter-American collective security system needed in order to deal with such situations threatening peace.[2]

At the Third Meeting of Consultation at Rio de Janeiro, the Inter-American Juridical Committee was instructed to prepare two documents about the different viewpoints of the American governments concerning the position

of the inter-American system within the proposed United Nations Organization. Four recommendations of the first document, entitled "Preliminary Recommendations on Post-War Problems," bear particular importance: 1) unqualified obligation to settle disputes through peaceful means, 2) solidarity in the presence of aggression, 3) a more effective system of collective security, and 4) repudiation of the use of force.[3] These four recommendations summarize, in general terms, the position of the American governments vis-a-vis the forthcoming integration of the inter-American collective security system into the international collective security system of the United Nations.

These four recommendations, but mainly the fourth one, repudiation of the use of force, provided a restatement of a long-held underlying assumption that the inter-American collective security system is unique and, in virtue of this, that peace and security would be maintained without the use of force.

The binding power of the collective security system up to this time had rested upon intangible, philosophically-oriented forces evoked by the "uniqueness" of the inter-American system. "Uniqueness" meant that the American republics shared certain cohesive factors derived from a common historical background, and also shared many of the same contemporary problems and mutually-accepted future goals. Such a conception of the collective security system

ruled out the use of force as a means for the settlement of disputes.

On the other hand, this "unique" conception of the system seemed to pre-suppose that if a more pragmatic approach establishing a system of collective security based on a compulsory-enforcement and use-of-force structure was adopted, it would be directed only against extra-continental powers, because under the "uniqueness" premise, compulsion and the use of force were ruled out as a means to settle disputes among American powers.

The transformation of the inter-American collective security system in the 1945-1948 period changed this utopian outlook by forcing the participants to face the necessity of the use of force in maintaining peace even if such peace were threatened by an American republic. The realization of the necessity to use force against a hypothetical threat to peace by an American republic was a far-reaching innovation of the inter-American collective security system. It proved two things: 1) that the system is not as "unique" as it purports to be, and 2) that the maintenance of peace through a true collective security system required compulsory-enforcement and use-of-force structures as the pivotal point of the entire system.

The idea of the establishment of a general international organization became clearer when the Dumbarton Oaks Proposals containing the platform which was to shape the structure of the United Nations Organization were released.

None of the governments of the inter-American system, except the government of the United States, were invited to participate in the discussions at Dumbarton Oaks. At Dumbarton Oaks, the United States endorsed the superseding jurisdiction of the United Nations over regional organizations in matters pertaining to the maintenance of peace and security. The Latin American governments feared that this new focus of the United States government on the United Nations Organization would eventually shift the U. S. interest from regionalism to universalism in the maintenance of peace and security. They felt that shift ultimately would diminish the legal role of the inter-American collective security system in managing its own maintenance of security.[4]

The second document submitted by the Inter-American Juridical Committee was prepared in compliance with powers granted to it by Resolution XXV of the Third Meeting of Consultation held at Rio. This document contained several recommendations made by the Latin American governments on the establishment of the United Nations, together with a critique of the Dumbarton Oaks Proposals. The latter critique suggested the necessity of flexibility of accepted international law to accommodate new situations so that ". . . existing rules of positive international law must not be regarded as fixing permanently the status quo." The Latin American recommendations concerning the formation of

the United Nations included the following important amendments to the Dumbarton Oaks Proposals: 1) a more inclusive definition of the principle of sovereign equality stating that all the states are juridically equal, 2) a willingness to fulfill the obligations in the then proposed Charter of the United Nations and to the principle of pacta sunt servanda. Borrowing from its first document, the Inter-American Juridical Committee repeated two recommendations: 3) the obligation for the settlement of disputes through peaceful means, and 4) a call to refrain from the use of force. Commenting on the importance of these last two recommendations, the second document stated that:

> . . . the question whether it would not be desirable at this point to make clear that provisions for the peaceful settlement of disputes and for the renunciation of the use of force can only be made practically effective if they are accompanied by the recognition of the need of making changes in the law to meet the changing conditions of international life.[5]

Against this background we proceed to study the first of the four important inter-American conferences held in the 1945-1948 period -- the Conference for War and Peace held in Mexico City from February 21 to March 28, 1945, the Chapultepec Conference.

The deliberations of this Conference were divided among six general commissions dealing with war cooperation, governmental control of fabrication and exportation of armaments, measures for the extradition of criminals of war, elimination of subversive activities, intellectual

cooperation and cooperation with the United Nations.[6] Of these, the last was by far the most important for an understanding of the evolving inter-American collective security system.

In these deliberations, high priority was given to the preservation of the inter-American security system as an autonomous regional system. This autonomy had been challenged by the proposed jurisdiction suggested for the Security Council of the United Nations. According to Section C, Chapter VIII, of the Dumbarton Oaks Proposals:

> The Security Council should, where appropriate, utilize such (regional) arrangements or agencies for enforcement action under its authority, but no enforcement action should be taken under regional arrangements or by regional agencies without the authorization of the Security Council.[7] (emphasis added)

Thus the Dumbarton Oaks Proposals stipulated that the foci of decision-making and the jurisdiction over security matters was to be transferred from the regional to the universal level, or in this case, from the Pan American Union to the Security Council.[8] The Latin American diplomats could not conceive of delegating such superseding jurisdiction to the United Nations unless seats on the Security Council were granted to the Latin American governments. Since under the Dumbarton Oaks Proposals these seats were reserved for the "Big Four," the Latin American governments declared the necessity of protecting the autonomous jurisdiction of the inter-American collective security system

from the deadlocks which might take place at the Security Council. This necessity was explicitly announced to the United States government by Carlos Martins, the Brazilian ambassador to Washington, on behalf of the Latin American governments. This position was then officially stipulated in Resolution XXX of the Mexico City Conference which was entitled "On the Establishment of a General International Organization and Annexed Conferences."

The threats imposed by World War II forced the American diplomats to incorporate the use of sanctions and of armed force for the preservation of peace into the growing framework of the inter-American collective security system. Perhaps because this incorporation of the use of force was speeded by war necessities, it was deemed a provisional measure. The use of armed force has, however, become an accepted necessity since 1945, as a legal norm if not always in a particular concrete situation.

By accepting the necessity for enforcement actions for the preservation of peace, ultimately backed by armed force, the Latin American diplomats began to conceive of the collective security system at a more realistic level. Although this shift from the utopian to the realistic level was impelled by the proposed use of force imposed by war necessities, it did contribute to the evolution of accepted action patterns which would make the inter-American collective security system an operating mechanism and not simply a collection of principles.

This new realistic approach distinguishes, according to the Colombian jurist Caicedo Castilla, between the preventive and the repressive phases as the two component parts of the inter-American collective security system. The preventive phase, as its name indicates, deals with the instruments of peace necessary to prevent the breaking of hostilities. It encompasses good offices, mediation and several treaty agreements, among which the 1948 Pact of Bogota is the cornerstone. But once the preventive phase has failed and hostilities have broken out, a different mechanism is set into operation in order to repress violence and to re-establish peace. This is the repressive phase. Although the inter-American collective security system includes both phases, this study will give primary consideration to the repressive phase of the system.[9] This new realistic conception was stated officially in Article VIII of the Mexico City Conference. The third part of Article VIII read:

> That every attack of a state against the integrity or the inviolability of territory, or against the sovereignty or political independence of an American state, shall, in conformance with Part III thereof, be considered as an act of aggression against the other states which signed this declaration.[10]

The enforcement measures proposed to cope with the acts of aggression were: 1) recall of chiefs of diplomatic missions, 2) breaking of diplomatic relations, 3) breaking of consular relations, 4) breaking of postal, telegraphic,

telephonic and radio-telephonic relations, 5) interruption of economic, commercial and financial relations, and 6) use of armed force.[11] Such measures eventually were listed in Article 8 of the 1947 Rio Treaty.

Article VIII of the Mexico City Conference, officially entitled "Reciprocal Assistance and American Solidarity," became known as the Act of Chapultepec.

The Act of Chapultepec was the first attempt to provide a juridical basis to the enforcement action of the inter-American collective security system, by specifying what measures would be undertaken under certain given circumstances defined as "acts of aggression."[12] Prior to Chapultepec, the Meetings of Consultation, in their ad hoc basis, were flexible enough to determine what constituted an act of aggression and suggest repressive measures commensurate to such aggression.

Once this had been done, it was up to the member-state to adopt the suggested measures or otherwise follow the measures which each deemed necessary to restore peace. The Act of Chapultepec contributed to the idea of collective security then, by suggesting that such measures should be taken by all the member-states.

There was no doubt that this new trend at the Mexico City Conference to give a more permanent juridical status to enforcement actions based on common participation enhance the make-up and respectability of the inter-American

collective security system vis-a-vis the forthcoming San Francisco Conference, where the relationship of the regional system to the universal system was to be discussed.[13] The Latin American governments, by attempting to provide a juridical definition, of the issues, circumstances and procedures of the collective security system, demonstrated that they preferred juridical rigidity over political flexibility where the aforementioned aspects of the collective security system could be interpreted according to political pressures.

This attempt to build into the collective security system an automatic mechanism controlled by legal provisions was a reflection of the high value placed upon the implicit equality of states that is incorporated into inter-American law.[14] Although the forgers of this new trend to develop a more practical system of collective security, moved in the right direction as far as the establishment of a true collective security system was concerned, the question to be asked is to what extent a system based upon a juridical structure can function in a legal vacuum without being affected by political pressures?

Another improvement in the enforcement mechanism of the collective security system which resulted from the Mexico City Conference was granting formal authority to the Pan American Union to deal with "political" problems. Prior to this, as explicitly stated at the 1928 Havana Conference,

the Pan American Union was to abstain from interfering with political matters. The jurisdiction of the Pan American Union was now extended to encompass, as Munro says, ". . . every matter that affects the effective functioning of the inter-American system and the solidarity and general welfare of the American Republics."[14] Resolution IV of the Mexico City Conference also suggested changing the provisional status of the Inter-American Defense Board into a permanent military body with the duty of advising the collective security system. Finally, through Resolution IX entitled "Reorganization, Consolidation and Strengthening of the Inter-American System," the way was open for the complete re-structuring of the whole inter-American system, at the proposed Ninth International Conference of American States in Bogota. This Conference which established the Organization of American States, was postponed until 1948.

The management of international security granted by the Dumbarton Oaks Proposals to the Security Council at the United Nations involved a jurisdictional conflict with the inter-American collective security system. The conflict was more readily apparent after the expansion of the regional system following the Mexico City Conference.

When the San Francisco Conference was held to form the United Nations Organization, this matter was referred to the Fourth Committee, of Commission III, chaired by Alberto Lleras Camargo from Colombia. The major disagreement

which led to several impasses in the Conference, was the fact that under the Dumbarton Oaks formula the veto privilege of a member of the Security Council could delay and even negate measures, which in cases of hostilities, the inter-American collective security system deemed appropriate or necessary to restore peace. The issue has been summarized by Mecham. "The critical solution was to find a formula that would recognize the paramount authority of the world organization in all enforcement action, and yet permit regional action independently in case of undue delay or ineffectiveness."[16]

At the height of the deadlock the American Secretary of State, after conferring with the Latin American diplomats, proposed a solution by which the Security Council would give jurisdictional autonomy to the inter-American collective security system until the Security Council had been charged with the responsibility by the nations or parties to the disputes. This proposal was not accepted by the Latin American diplomats and the matter was referred for further study to a sub-committee headed by Senator Vanderbilt from the United States. Senator Vanderbilt proposed a solution recognizing that the member states of the inter-American collective security system, as sovereign entities under international law, have a right to individual or collective self-defense, whether or not they belong to the regional system. He felt that nothing in the United

Nations Charter should impair this inherent right of self-defense.[17] This meant that the Security Council could not interfere with the ability of the member-states of the inter-American collective security system to exercise their right of individual or collective self-defense in a case of armed attack.

The so-called "Vanderbilt formula" removed the threat of veto by the Security Council by recognizing self-defense in the case of armed attack. This solution became Art. 51 of the United Nations Charter, the first of which read: "Nothing in the present Charter should impair the right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations . . ."[18] It is important to notice that according to Art. 51 the autonomous jurisdiction of the inter-American collective security system follows only from cases of "armed attack and self-defense." The basic question for determining the legal right of independence regional action therefore, is just what constitutes "armed attack and self-defense." The answer to this question will become more apparent when we analyze the role of the Soviet Union veto at the Security Council in stopping the application of sanctions against the Cuban Government by the inter-American collective security system.

The provisional stipulation of enforcement action and use of force adopted at the Mexico City Conference[19]

were made official at the Inter-American Conference for the Maintenance of Continental Peace and Security. This Conference produced the Inter-American Treaty of Reciprocal Assistance, also known as the Rio Treaty of 1947, the cornerstone of the whole regional collective security system. The Conference was held in Quintandinha Hotel of Petropolis, Brazil, from August 15 to September 2, 1947. The topics on the agenda were studied prior to the meeting by a commission formed by the ambassadors from Bolivia, Panama, Brazil, Honduras, Chile, Cuba, Mexico, and representatives from the United States and Ecuador. This commission rendered an excellent comparative study on the different projects submitted by the governments of Bolivia, Brazil, Chile, Ecuador, the United States, Panama and Uruguay, interpreting the major issues of the collective security system. These major issues were: 1) the obligation of the signatories to the Inter-American Treaty of Reciprocal Assistance, or Rio Treaty, to take positive action beyond mere consultation during cases of aggression, in virtue of the solidarity principle known as "collective self-defense," 2) specification of what constitutes "acts of aggression" and "armed attack," 3) specification of the machinery through which the necessary measures to face these aggressions would be undertaken, and 4) compliance with the United Nations Charter.[20]

The repressive phase of the inter-American collective security system was thoroughly discussed for the first

time.[21] The projects presented prior to the Conference strived to define "acts of aggression" in quite similar terms. For instance, the projects of Bolivia, Chile, Ecuador, the United States and Uruguay referred to acts against the "integrity or the inviolability of the territory, or against the sovereignty or political independence of an American State." Likewise the Brazilian, Mexican and Panamenian projects followed the same general, vague line by speaking of acts against "the national security, territorial integrity or political independence of an American state."[22] All the projects agreed on the "universality of the principle of solidarity against the aggressor," simply the solidarity principle, as the new underlying force of the inter-American collective security system.

Prior to the Rio Treaty, it was agreed that in the case of armed attack the only obligation which the solidarity principle imposed upon the member states of the collective security system was consultation. This obligation was, according to Lleras Camargo, disproportionate. Such disproportion could have been corrected in the Rio Treaty in one of two ways: 1) either the obligations resulting from the solidarity principe be decreased or 2) increased.

It was decided then under the Rio Treaty to increase the obligations of the signatories by stipulating their obligation to meet cases of armed attack. So in fact the obligations of the solidarity principle, as the governing

concept of the collective security system, were expanded from the mere obligation of consultation to the obligation of facing cases of armed attack collectively. This was a very important innovation of the inter-American collective security system. Thus the right for collective self-defense, as a result of the Rio Treaty, became a duty in the form of a mandatory provision. Indeed the Rio Treaty, according to Yakemtchouck ". . . est un document juridique dont le but est de transformer le droit a la legitime defense individuelle et collective tel qu'il est stipule a l'article 51 de la Charte de la O.N.U. en un devoir."[23]

Therefore, in the case of armed attack, the signatories of the Rio Treaty have the obligation, recognized by Art. 51 of the United Nations Charter, of collective self-defense and to repel such attack until peace has been re-established through the appropriate mechanisms of the inter-American collective security system. In this case, the inter-American collective security system acting through the emergency, but provisional, powers granted to the Governing Board of the Union of American Republics (now the Council of the Organization of American States) or through a Meeting of Consultation of Ministers of Foreign Affairs may: 1) give legal recognition to the defensive measures taken by the attacked state or to the measures taken collectively if the attacked state has requested the aid of other friendly states (where according to the Rio Treaty, such aid

is a duty) and report them to the Security Council; and, 2) if the defense measures are taken collectively, coordinate them until peace has been re-established.

During the application of measures taken only as self-defense to meet an armed attack, the inter-American collective security system becomes an independent body from the United Nations by removing the threat of veto from the Security Council. Since this important autonomy of the regional system exists only in cases of aggression labeled as "armed attack" and leading to "self-defense," we may conclude that such autonomy ultimately depends on the interpretation of what constitutes armed attack and self-defense.

This problem of interpretation is exacerbated by the fact that the Rio Treaty, 1) recognizes with the same validity acts of aggression other than armed attack, conflicting with Art. 51 of the United Nations Charter, which recognizes collective self-defense only in cases of armed attack; and, 2) gives the organ of consultation (either the Council of the O.A.S. or the meeting of consultation) the capacity to determine what ultimately constitutes an act of aggression.

These two points presented by the Rio Treaty are very important because, first, most of the so-called "acts of aggression" within the inter-American collective security system have taken forms other than overt armed attack,

ranging from subversive propaganda to para-military activities such as guerrila warfare and, second, the organ of consultation may, in practice, interpret any such kind of aggression short of overt armed attack as requiring self-defense thus automatically freeing it from ultimate dependence on the Security Council utilizing the provisions of Art. 51 of the United Nations Charter. As Kunz has put it:

> If 'armed attack' means illegal armed attack, it means, on the other hand, any illegal armed attack, even small border incidents; necessity or proportionality are not conditions for the exercise of self-defense under Art. 51.[24] (Emphasis added.)

This problem will be more readily seen when we discuss the point that the subversion supported by the Cuban Government is not, technically speaking, regarded as serious as armed attack, although from a practical viewpoint, it presents grave security problems which in the long run may be more difficult to control than armed attack. This problem of the Cuban subversion answers the question which the Study Committee of the projects of the Rio Treaty posed when it stated that:

> In the opinion of the Committee a basic problem which emerges from the above analysis is related to the fact that under Article 51 prior authorization in case of armed attack is not necessary before regional action can be taken, whereas regional enforcement action under the other relevant provisions of the Charter with respect to other types of aggression, overt or in the form of a threat, does require such authorization."[25]

The decisive problem for the functioning of the inter-American collective security system rests then, paradoxically,

not in the perpetuation of an act of aggression per se, but how, such an act, no matter how overt or covert it has been carried out, is interpreted.

This process of interpretation, as a major determinant of the effective functioning of the collective security system, is found in the decision-making processes of the Council of the O.A.S. and/or the meetings of consultation. The process of interpretation will be a matter of further study in the fourth chapter when we discussed the political consensus gap.

For matters of analysis we may speak of the process of interpretation composed of two general, inter-related phases. The first phase, or legal interpretation, is the one in which the Rio Treaty makes the right of individual self-defense a duty, which in virtue of the solidarity principle, leads to collective self-defense. In this first phase the basic problem to be determined is whether the attacked state, in whose behalf the obligation of collective self-defense is being exercised, does have such right of self-defense. Obviously, if there is no right of individual self-defense, there can not be a right of collective self-defense. According to Kunz: "In consequence all further legal problems concerning collective self-defense depend on the problem of individual self-defense."[26] However, and here we enter the second phase, or political interpretation, supposing that if the individual self-defense

is legally correct, the application of the collective measures, under the assumption of re-establishing peace and suppressing violence, might go beyond those measures which are truly necessary to restore peace. Here the manifest legal obligation of self-defense is being used as a valid juridical rationalization for the pursuit of latent political goals. Thus the scope of the measures undertaken may be used as a yardstick to determine whether the interpretation has been legal, political or both. The difference between the legal and political interpretation will be further discussed in Chapter IV.

Kunz says that the right for self-defense under Art. 51 of the United Nations Charter is not a procedure to enforce the law but

> . . . it seems to give the state or states exercising the right of individual or collective self-defense the right to resort to a justified war, to carry this war to victory, to impose a peace treaty upon the vanquished aggressor, always presupposing that the Security Council has failed and continues to fail taking the measures necessary to maintain international peace and security. The right of self-defense is, in such cases, a right to resort to war.[27]

Lleras Camargo also makes an important distinction between the measures which can be taken by the collective security system when he stated that:

> There might be a confusion between the right or the obligation of legitimate collective self-defense and the application of collective measures of defense and, therefore, it can be erroneously believed that in order to exercise this right, it is necessary to coordinate the measures through previous consultation.[28] (Emphasis added, my translation.)

This situation was corrected in part by the Rio Treaty which established that all decisions taken (except the use armed forces, which ultimately depends on the approval of the national parliamentary assemblies of the member-states) by two-thirds votes of the signatories of the Rio Treaty are binding for all. The fact that the United States was willing to accept this innovation in the voting procedure was, according to Lleras, another step forward toward the consolidation of the inter-American collective security system.[29]

CHART #1 GENERAL PATTERN OF LEGAL COLLECTIVE ACTION AS THE EFFECTIVE MECHANISM OF THE INTER-AMERICAN COLLECTIVE SECURITY SYSTEM.

I. MEETINGS OF CONSULTATION.

Legal provisions.

Interpretation process

Scope of measures adopted.

Political threads.

LEGAL COLLECTIVE ACTION.

II. O.A.S. COUNCIL.

A. Made obligatory by 1947 Rio Treaty

B. Art. 51 of U.N.
a) "armed attack"
b) "self-defense"

Footnotes for Chapter II

[1]For a recent evaluation of the system see: Jerome Slater, The O.A.S. and United States Foreign Policy, Ohio University Press, 1967.

[2]Kunz, Josef L. "The Inter-American Conference on Problems on War and Peace at Mexico City and the Problem of the Reorganization of the Inter-American System," American Journal of International Law, Vol. 39, 1945, pp. 527-533.

[3]Houston, John. Latin America in the United Nations, Carnegie Endowment for International Peace, 1956, See Chapter I.

[4]"The persistent refusal of the United States to meet with other American states in a consultative meeting of Foreign Ministers to consider such urgent problems as the Argentine question, the general international organization, and post-war economic readjustments in Latin America, lent substance to the apprehension that emphasis in United States policy was being shifted from regional to universal organization." Mecham, Lloyd. "The Integration of the Inter-American Security System into the United Nations," Journal of Politics, Vol. 9, 1947, pp. 181-182.

[5]Supplement to the American Journal of International Law, Vol. 39, 1945, p. 59.

[6]Avila, Floria L. La Solidaridad de America y sus Proyecciones hacia el Futuro, Universidad Nacional de Mexico, 1956, p. 51.

[7]Houston, John. Ibid., p. 47.

[8]Ball, Margaret. The Problem of Inter-American Organization, Stanford University Press, 1944. See especially Chapter VI.

[9]Limited sanctions, however, were suggested before in the Anti-War Treaty of Non-Aggression and Conciliation signed at Rio in 1933 and the Convention to Coordinate, Extend, and Assure the Fulfillment of the Existing Treaties signed at Buenos Aires in 1936. Canyes, Manuel. "The Inter-American System and the Conference of Chapultepec," American Journal of International Law, July 1945, pp. 504-526.

[10]Supplement to the American Journal of International Law, Vol. 39, 1945, pp. 108-111.

[11]"In the Act of Chapultepec, the governments for the first time expressly gave enforcement functions to the system." Ball, Margaret. "Inter-Americanism and World Organization," Current History, Vol. X, 1946, p. 4.

[12]Kunz, Josef. "The Inter-American System and the United Nations Organizations," American Journal of International Law, Vol. 39, 1945, pp. 758-767.

[13]"Les Etats americains voyaient, en effet, dans l' Acte de Chapultepec, et dans le systeme de defense regionale qu'il instituait, la garantie essentille de leur securite. Il importait, dans ces conditions, de maintenir ce systeme et de lui donner la plus grande autonomie dans le cadre de Nations Unies." Saba, Hana. "Les accords regionaux dans la Charte de l'O.N.U."; Academie de Droit Internationale de La Haye, Recuil de Cours, Vol. 80, 1952, pp. 666-667.

[14]Munro, Dana. "The Mexico City Conference and the Inter-American System," Dept. of State Bulletin, Vol. 9, p. 525-530.

[15]Mecham, Lloyd. Op. Cit., p. 191.

[16]Houston, John. Op. Cit., See Chapters I and II for relevant discussion.

[17]Aufricht, Hans. "Pan-Americanism and the United Nations," Social Research, Vol. X, 1943, pp. 417-435.

[18]The Act of Chapultepec, according to Fernandez-Shaw, is divided into an expository and a substantive part. The former is a resume of the major principles incorporated into inter-American law and in the latter a recommendation for the formalization of the collective security system is found. Fernandez-Shaw, Felix. La Organizacion de Estados Americanos, Madrid, Ediciones Cultura Hispanica, 1959, pp. 178-185.

[19]Ward, Allen. "The Inter-American Treaty of Reciprocal Assistance," Dept. of State Bulletin, Vol. 17, pp. 983-987. See also Finch, George. "The Inter-American Defense Treaty," American Journal of International Law, Vol. 41, pp. 863-866.

[20]Caicedo Castilla, Jose Joaquin. La Conferencia de Petropolis y el Tratado Interamericano de Asistencia Reciproca Firmado en Rio de Janeiro en 1947, Sao Paulo, 1941, p. 48.

[21]Pan American Union. Inter-American Conference for the Maintenance of Continental Peace and Security. Washington, 1946. See mainly the first part, "Report of the Special Committee of the Governing Board Appointed to Analyze the Projects," pp. 1-25.

[22]Union Panamericana. Informe sobre la Conferencia Interamericana para el Mantenimiento de la Paz y Seguridad del Continente, Washington, D.C., 1947, p. 13.

[23]Quoted from Fernandez-Shaw, Felix. La Organizacion de Estados Americanos, Ibid., p. 187.

[24]Kunz, Josef. "Individual and Collective Self-Defense in Article 51 of the Charter of the United Nations," American Journal of International Law, Vol. 41, 1947, p. 878.

[25]Pan American Union. Inter-American Conference for the Maintenance of Continental Peace and Security, Op. Cit., p. 9.

[26]Kunz, Josef. "Individual and Collective Self-Defense in Article 51 of the Charter of the United Nations," Ibid., p. 875.

[27]Ibid., pp. 876-877.

[28]Union Panamericana. Informe sobre la Conferencia Interamericana para el Mantenimiento de la Paz y la Seguridad del Continente, Op. Cit., p. 20.

[29]Gomez Robledo, Antonio. La Seguridad Colectiva en el Continente Americano, Mexico, 1960. See mainly Chapter VI, "Los Acuerdos Regionales y el Art. 51," and Chapter VIII, "El Tratado de Rio."

CHAPTER THREE

The inter-American collective security system, as we saw in the last chapter, is composed of two inter-related phases -- the preventive and the repressive phases.

We start this chapter with the major assumption that the growth of these two phases has not been balanced. That is, the preventive phase (or the measures which can be taken to prevent hostilities) is much more developed than the repressive phase (or the measures which can be taken to suppress hostilities). The legal core of the preventive phase is the so-called Pact of Bogota, or American Treaty of Pacific Settlement, which was adopted by the Ninth Conference of American States held in Bogota in 1948. On the other hand, the legal core of the repressive phase is found in the Inter-American Treaty of Reciprocal Assistance of 1947, or Rio Treaty, and in the Charter of the Organization of American States adopted in the same Conference, particularly Article 43.

The instrument, through which the repressive phase operates, as we noted in the preceding chapter, is the effective use of legal collective action, more commonly known as "sanctions." Such legal collective action can be adopted either through the emergency powers of the O.A.S. or through a meeting of consultation of ministers of foreign affairs, called in virtue of the Rio Treaty or the Charter of the O.A.S. Ultimately, therefore, the maintenance of

peace and security in the Western Hemisphere depends on the ability of the inter-American collective security system to apply effectively legal collective action. The present chapter will attempt to analyze and determine the factors that in general affect the ability of the inter-American collective security system to use collective action.

In general the disputes which have been channeled for solution through the inter-American system, or were seriously considered for referral, have not been serious enough as to demand the application of the repressive phase of the collective security system. The major disputes dealt with at the inter-American level have been:

1) conflict between Costa Rica and Nicaragua, 1948-1949,
2) conflict between Haiti and the Dominican Republic, 1950,
3) situation in Guatemala, 1954,
4) conflict again between Costa Rica and Nicaragua, 1955-1956,
5) border dispute between Honduras and Nicaragua, 1957,
6) situation in Nicaragua, 1959,
7) situation in the Dominican Republic, 1960,
8) Cuban situation, 1959-present (1968).

The fact that these disputes were generally not deemed to constitute a serious threat to the inter-American

system, but above all the prompt and effective use of the instruments of the preventive phase (good offices, mediation, etc.) in the prevention of continued hostilities seemed to have sufficed to maintain peace and security without the application of the repressive phase. Of equal importance is the fact that the participation of the United States government and some of its agencies has been a decisive factor in the solution of these disputes and situations.

None of the threats challenging peace and security, however, have been considered sufficiently dangerous to require the application of legal collective action, or sanctions, as a means to solve such threats. The repressive phase of the collective security system, therefore, has not been tested by actual circumstances except with the 1960 Dominican case and also since 1960, the Cuban case. Thus the attempt to apply the repressive phase to the Dominican and Cuban cases stands as an exception in the study of the inter-American collective security system.

In the Dominican Republic case, discussed at the Sixth Meeting of Consultation held in August, 1960 in San Jose, Costa Rica, the Santo Domingo government was condemned for its intervention in the internal affairs of Venezuela. It was agreed at the meeting of consultation to apply sanctions in accordance with Art. 8 of the Rio Treaty by severing diplomatic relations and partially severing economic relations. Such sanctions were not preventive but

obviously they constituted a partial application of the repressive phase of the collective security system.

Due to the threats posed since 1959 by the Cuban Revolutionary Government, the inter-American collective security system has been challenged, for the first time, by an actual case where, at certain points, it has become apparent that legal collective action were the only means to solve such a threat. The Cuban case will be considered in the next chapter.

If the preventive phase has been refined and action patterns evolved by experience in actual cases, the repressive phase has not. Since it has always seemed remote in the inter-American system that a serious enough threat to security would appear to bring into operation the repressive phase, there seemed to be no need to refine and study the factors related to the application of legal collective action. As a consequence, when the more serious threats posed by the Cuban government's actions were brought to the attention of those responsible for the collective security system, they had no precedent for acting in the solution of a more serious, complicated security problem. To say that the inter-American collective security system has failed in its handling of the Cuban case seems an inescapable conclusion. This failure has been due to a series of interrelated gaps, both legal and political, in the inter-American collective security system. In the preceding chapter we

pointed out to the existence of the first gap: the interpretation process of the decision-making bodies of the collective security system.

Along with the idea that there seemed to be no necessity for the repressive phase in the inter-American system, a major pre-supposition inhibiting the development of legal collective action has been the view of the Latin American political elites toward the United States. On the one hand these elites have criticized, unjustly or not, the disparity of power between their countries and the United States; on the other hand, as members of the collective security system these same elites enjoy a feeling of security from serious threats to their peace and security based upon the military and economic power of the United States. The cooperation of the Latin American countries with the United States during the last two world wars show the validity of this assumption. Because of this feeling of security, deriving from shared membership in the inter-American system, these elites have felt reluctant to develop a sophisticated repressive collective security system with a compulsory-enforcement mechanism, fearing that the latter will be controlled by the United States. To some extent then the collective security system, for these elites, is viewed as a tool to control, or balance, their power disparity with the United States and not necessarily as a tool for the maintenance of inter-American security. As we will

see in the next chapter, it has been the policy of the Cuban government to point out continuously such disparity of power between the United States and the Latin American countries.

The Latin American governments fear that if legal collective action is formalized in some way, for instance the Argentinian proposal to create an Inter-American Peace-Keeping Force, this will lead to the institutionalization of intervention in Latin America either by the United States or by the more powerful Latin American countries which, along with the United States, control the interpretation process of the decision-making bodies of the collective security system. Such objections have been voiced mainly by the Mexican Government.

Such fear has led the Latin American countries thus to identify legal collective action with intervention. In their view, since intervention is condemned explicitly by inter-American law, i.e., Articles 15 and 17 of the O.A.S. Charter, then they believe that any attempt to institutionalize legal collective action would seem to imply institutionalization of violation of the O.A.S. Charter. But since legal collective action is the most effective instrument through which the inter-American collective security system maintains peace and security, there seems to be a need to institutionalize legal collective action so that the system be able to perform its task.

The question is obviously what is meant by institutionalized legal collective action.

A discussion of five important factors affecting the use of legal collective action may provide an answer to this question. Such discussion follows.

The acceptance of collective enforcement sanctions in the event of armed attack requiring self-defense has become, through the Rio Treaty, the focal point that makes the inter-American collective security system a working mechanism.[1] The application of such collective actions has elicited, however, the question of whether true, legal collective action may violate the non-intervention principle discussed at the 1928 Havana Conference, then accepted as part of inter-American law at the 1933 Montevideo Conference and finally incorporated into the inter-American system through Articles 15 and 17 of the O.A.S. Charter which resulted from the Ninth Conference of American States held at Bogota in 1948.[2]

As Chapter II suggested, the application of legally-based measures of collective action might go beyond its intended scope (supposedly, at least according to existing treaties, for the re-establishment of peace), thus violating the non-intervention principle stipulated by Arts. 15 and 17 of the O.A.S. Charter. The first part of Art. 15 states that: "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever,

in the internal or external affairs of any other State." The first part of Art. 17 says, in turn, that: "The territory is inviolable."

Although neither the Rio Treaty nor the Charter of the O.A.S. rigorously define what is meant juridically by intervention and collective action, there seems to be a tacit understanding that intervention is a negative term and collective action is a positive term. In its negative term, intervention implies a violation of the sovereignty of a state, or states. Such intervention, condemned by inter-American law, is not condemned because of being an intervention per se but because a given act labeled as intervention undermines the sovereignty and thus the juridical equality of a state. To use the terminology of a member of the Inter-American Juridical Commission, such an act, involving a violation of a Latin American state's sovereignty, may be referred to as "intervention-offense."[3]

On the other hand, there may be cases which, although constituting an intervention, are not regarded as such because they do not violate the sovereignty of the state. These cases of "positive" intervention rather are condoned, and in fact encouraged, because instead of undermining sovereignty they tend to "reinforce" it. The Alliance for Progress programs, Peace Corps volunteers, aid in the event of disasters, and shipment of surplus food are cases of "positive" intervention which do not constitute a violation of the non-intervention principle.

The Charter of the O.A.S., summarizing a whole array of previously accepted principles, expanded the notion of sovereignty by saying that

> . . . American solidarity and good neighborlessness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man.

This clearly means that the sovereignty of the state derives from, and is vested in government, by the people through the exercise of representative democracy. As Article 5, section d, of the O.A.S. Charter says:

> The solidarity of the American states and the high aims which are sought through it require the political organization of those states on the basis of the effective exercise of representative democracy. (Emphasis added.)

Resolution XXX of the Bogota Conference entitled "American Declaration of the Rights and Duties of Man," along with the O.A.S. Charter, recognizes that "self-determination of people" means, in the inter-American system, at least the existence of democratic forms of government that respect the essential rights of man.[4]

Due to such recognition, the existence of representative democracy and respect for human rights is projected through the acceptance of the O.A.S. Charter from the domestic to the inter-American level. To this extent, Zarate comments:

> Asi es communis opinio que el ejercicio de la democracia representativa y el respeto a los derechos humanos dejo de ser, a partir de esta fecha, asunto interno de cada Estado para convertirse en norma obligatoria del Sistema Inter-Americano.[5]

Dr. Guillermo Belt, former Cuban ambassador to Washington and to the O.A.S., added that: "Los derechos fundamentales del hombre dejaron de ser materia exclusiva del derecho interno para convertirse en preoccupacion primordial del Derecho Internacional."[6]

The importance of this change results from the fact that the so-called doctrine of self-determination of people was equated, in the O.A.S. Charter, with the internal exercise of representative democracy and respect for human rights. The acceptance of this close relationship reinforces the idea developed in Chapters I and II that the respectability of inter-American law is related to the state of affairs within the member-countries of the inter-American system. This relationship obviously was expanded by the projection of representative democracy from the internal to the external (or inter-American) level.

A number of the Latin American states appear to base their juridical personality on a sovereignty which has not been vested, or derived from, the people. As a consequence the inter-American system includes certain governments which claim a juridical personality (and the rights arising therefrom) which do not derive from the people

through the exercise of representative democracy as the O.A.S. Charter requires. As members of the inter-American system, however, these governments enjoy the protection of inter-American law, including the non-intervention principle, even though the juridical personality which confers this protection does not derive from a popular mandate and respect for human rights. Do such governments have a right to a juridical personality? Can they enjoy the external benefits of the non-intervention principle even though internally they may suppress popular participation in the political process, minimizing responsibility to the citizen, and ignore respect for human rights? In the case of an exile attack willing to reinstate the principles which the government is negating, and perhaps suppressing, does such a government have a right to seek the aid of the inter-American collective security system?

The shielding of these governments which "represent the existence of a political system, on the domestic level, which is incompatible with a harmonious existence in the international order" behind the non-intervention principle led Eduardo Rodriguez-Larreta to propose in 1945 that: "'Non-intervention' cannot be converted into a right to invoke one principle in order to be able to violate all others principles with immunity."[7]

This last statement, which forms the core of the so-called Rodriguez-Larreta doctrine, suggests a differentiation between "intervention-offense" and, true collective

action. The Rodriguez-Larreta doctrine also establishes a relationship between peace and the democratic form of government. That is, by drawing a parallel between peace in the inter-American system and the exercise of representative democracy by its member-states, the Rodriguez-Larreta doctrine suggests that this last ingredient must be present for peace to be maintained in the inter-American system.

The Rodriguez-Larreta doctrine further suggests that if both the exercise of representative democracy and respect for human rights are violated, some sort of collective action should be taken by the members of the inter-American system in order to reinstate or protect representative democracy and human rights. The Rodriguez-Larreta doctrine thus adds a new dimension to the non-intervention principle by establishing that such collective action could not be considered as a case of "intervention-offense" but rather as a "positive intervention" directed toward the reinforcement of national sovereignty. This it accomplishes through its willingness to make the latter a true reflection of representative democracy and respect for human rights.[8] As Zarate has added:

> Toda intervencion es ilicita como lo fuera en particular el allanamiento del hogar ajeno. Pero las medidas que tomen los Estados, de acuerdo con los tratados actualmente en vigencia para asegurar la paz, la convivencia entre los pueblos y la solidaridad entre los mismos, evitando la violacion de los derechos humanos para evitar el cercenamiento de la verdadera democracia, no constituyen actos de intervencion,

> sino por el contrario, acciones juridicas collectivas, destinadas a reclamar de un Estado o Estados el cumplimiento de sus obligaciones internacionales.[9] (Emphasis added).

The Rodriguez-Larreta doctrine, by suggesting inter-American protection of democracy and human rights, struck at the core of the problems which inhibit the effective functioning of the inter-American collective security system. These problems are: 1) the political vs. the legal issues; 2) the internal-external relationships which characterize inter-American law; and 3) due to the previous points, a lack of differentiation between what constitutes intervention and what constitutes legal collective action. This last is exacerbated by the existence of dictatorial governments which, as members of the inter-American collective security system, hide and protect themselves behind the non-intervention principle.[10]

One technical problem limits the validity of the Rodriguez-Larreta doctrine. The doctrine is not incorporated into the corpus of inter-American law as an officially-stipulated principle or convention. Since the doctrine has not been legally accepted, it is assumed that the use of collective action for the re-establishment of representative democracy would constitute a violation of the non-intervention principle clearly stated in Articles 15 and 17 of the O.A.S. Charter. Had the Rodriguez-Larreta been incorporated into a binding treaty, say the Rio Treaty, then

collective action would have been legally possible and would not violate Articles 15 and 17. Indeed as Article 19 of the O.A.S. Charter says: "Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the principles set forth in Articles 15 and 17."

The Rodriguez-Larreta doctrine is a clear example, therefore, of certain aspects of the inter-American collective security system with which everybody seems to agree in theory but are unable to accept in practice, because real domestic political pressures eventually outweigh the abstract legal concepts which all the member-states support in principle.[11]

For this reason, although all the member-states agree on representative democracy as the best form of government for the members of the inter-American system, agreement has not been strong enough to develop the juridical apparatus needed to enforce these norms.

The first legal barrier, therefore, has been the reluctance to put the ideas behind the Rodriguez-Larreta doctrine in the form of a treaty. If such a treaty did exist, the differences between intervention and collective action would become more apparent. Indeed, as the Inter-American Juridical Committee has stated rather recently:

> Intervention is an arbitrary action; collective action is a legal procedure. Intervention arises from the decision of one or more states that try to impose their will on another or others in their internal or external affairs, while collective action is derived from international agreements, freely accepted and ratified by the states . . . (Emphasis added.)

Although this seems to be a legal problem, it is actually a political one. As Carlos Garcia-Bauer, former Minister of Foreign Affairs of Guatemala, has stated:

> El problema, sin embargo, de si se va a otorgar o no proteccion internacional a los derechos humanos es un problema mas que todo de indole politica. Aunque juridicamente se pueda estructurar un sistema apropiado . . . si no hay previamente una firme decision de orden politico al respecto, todo esfuerzo sera infructuoso.

Concerning the internal-external relationship of inter-American law, Garcia-Bauer further comments that:

> La decision politica de proteger internacionalmente la observancia de los derechos humanos fundamentales determina la necesidad del replanteamiento de la ratio legis (esfera de competencia) del orden internacional y del orden interno, con la consequencia de que el primero tiene que expandirse a costa de la reduccion del orden domestico.[13] (Emphasis added.)

Concomitantly with this first politico-legal barrier (that is, summarizing, the reluctance to develop, through a treaty, the appropriate apparatus to protect representative democracy and human rights so as to be able to differentiate intervention from collective action in order not to restrain the functioning of the inter-American collective security system), there is a second legal barrier. As

Chapter II points out, according to Art. 51 of the U. N. Charter, the inter-American collective security system is only able to carry out collective action in the event of individual or collective self-defense in case of armed attack. Since Art. 51 of the U. N. Charter does not recognize collective action for the re-establishment of representative democracy, then even if a treaty is adopted at the inter-American level to guarantee democratic forms of government through the use of collective action, the regional system relationship with the United Nations would have to be changed. This restriction is the second major legal gap which hinders the development of a formal distinction between intervention and collective action within the inter-American collective security system.[14]

Along with these two legal gaps, there are also two problems of a political nature. The first political problem is the politicization of the non-intervention principle which results from participation in the inter-American system of certain Latin American governments which suppress, either partially or wholly, representative democracy and human rights but still enjoy the international legal protection of the non-intervention principle.[15]

Reinforcing this politicization of the non-intervention principle, is the second political problem. That is, the United States, as the most influential actor in the organs of consultation of the inter-American collective

security system, by supporting those dictatorial governments has, in the view of the Latin American governments, slowed the movement toward the institutionalization of collective action and in general has contributed to the politicization of the entire collective security system.

The interplay of the four factors outlined above has, as a consequence, made difficult the differentiation between intervention and collective action. The pressure of political interests has outweighed the legality of juridical provisions and ultimately has led to an identification of collective action with intervention. This identification has weakened the legal independence of collective action from political pressures.

Finally such identification resulting from the non-intervention principle's politicization has produced the second gap which undermines the function of the inter-American security system.

The identification of collective action with intervention also is exacerbated by a fifth factor. Along with the other four factors outlined above, the communism issue has become an important variable which affects the effectiveness of the inter-American collective security system. The communism issue does not stand in isolation but rather is closely tied into the other four factors mentioned in this chapter. It is an underlying theme that cuts across the major politico-juridical gaps of the inter-American collective security system.

Resolution XXXII of the Ninth Conference of American States seems to be the first formal inter-American recognition of the communism issue. It stated that

> by its anti-democratic nature and its interventionist tendency, the political activity of international communism or any other totalitarian doctrine is incompatible with the concept of American freedom.

Indeed as John C. Dreier remarked, "This resolution is full of euphemisms and indirect references."[17]

This reference to communism failed to pinpoint its specific relationship, if any, to the inter-American collective security system. The communism issue was discussed further at the Tenth Inter-American Conference of American States, held in Caracas in 1954.[18] Resolution 93 of this Conference, entitled "Declaration of Solidarity for the Preservation of the Political Integrity of the American States against the Intervention of International Communism," or more succinctly known as the Caracas Resolution, was an important provision that formally stated the concern of the American countries about the communism issue. As the Caracas Resolution stated:

> . . . the domination or control of the political institutions of any American State by the international communist movement, extending to this Hemisphere the political system of an extra-continental power, would constitute a threat to the sovereignty and political independence of the American States, endangering the peace of America, would call for a Meeting of Consultation to consider the adoption of appropriate action in accordance with existing treaties.[19]

The specific implications of the communism issue for the inter-American collective security system are two-fold.

First, because of the nature of the issue itself, which tends to be a political rather than a legal problem, the legal stability of the collective security system was further undermined. Because its implications were poorly defined, the communism issue tended to obscure separation of the political and legal problems in the collective security system thus undermining the latter's ability to solve security problems where the communism issue is involved.

Second, it was clear then that the communism issue would further confuse a differentiation between collective action and intervention. As Dreier has commented,

> Viewed from a strictly and technical viewpoint, the Resolution (of Caracas) may, in fact, have erected a new obstruction in the consideration of the problem of communism in an American Republic by introducing the concept of 'domination or control of the political institutions'. Here is a new juridical barrier behind which the opponents of action can defend a negative policy. Given the reluctance of the Latin American states to undertake any collective action that might be considered as intervention in the affairs in one of their number, particularly on the urging of the United States, it has therefore seemed of doubtful value to invoke the Caracas Resolution.[20] (Emphasis added).

In the next chapter we will see, when discussing the Cuban situation, that the communism issue has been used as a defense by the Cuban Government to identify collective action with intervention as to avoid the application of sanctions by the collective security system.

The Mexican delegation commented at the Caracas Conference that allowing for collective action under the pretense of a "communist" threat implied an open door for United States intervention in Latin America. The communism issue, according to the Mexicans, would be used as a rationalization for intervention. Thus to institutionalize legal collective action on the basis of the communism issue meant the institutionalization of U. S. intervention.[21]

The communism issue therefore has obscured the differentiation between legal collective action and intervention. Such lack of differentiation inhibited the ability of the collective security system to apply legal collective action in the solution of security problems where the communism issue is involved. The Cuban situation has been a case testing the effectiveness of the collective security system to deal with the communism issue problem. The next chapter deals with the changes which have occurred in the collective security system and their relevance to the Cuban situation.

Footnotes for Chapter III

[1]Redington, Robert J. The Organization of American States as a Collective Security System, Industrial College of the Armed Forces, Washington, D. C., 1962. See mainly Chapter II, "The Rio Treaty."

[2]Fabela, Isidro. Intervencion, Universidad Nacional, Mexico, 1959. See "La Intervencion dentro de las Conferencias Panamericanas," pp. 177-266. See also Charles Fenwick, "Intervention: Individual and Collective," American Journal of International Law, Vol. 39, 1945, pp. 654-663.

[3]Inter-American Juridical Committee. Differences Between Intervention and Collective Security, Pan American Union, 1966.

[4]Cuevas, Francisco. "The Bogota Conference and Recent Developments in Pan American Relations: A Mexican View," International Affairs, Vol. 24, 1948, pp. 524-533. See also Charles Fenwick, "The Ninth International Conference of American States," AJIL, Vol. 42, 1948, pp. 553-567.

[5]Zarate, Luis. La No-Intervencion ante el Derecho Americano, ?, 1963, p. 182.

[6]Morales Morales, Minerva. Aspectos Politicos del Sistema Inter-Americano, Universidad Nacional, Mexico, 1961, p. 85.

[7]Connell-Smith, Gordon. The Inter-American System, Oxford University Press, 1966, p. 142.

[8]Ulloa, Alberto. "La Propuesta Rodriguez Larreta," Revista Peruana de Derecho Internacional, Lima, tomo V, no. 18, 1945, pp. 291-305.

[9]Zarate, Luis. Ibid., p. 191.

[10]Guzman Carrasco, Marco Antonio. No Intervencion y Proteccion Internacional de los Derechos Humanos, Editorial Universitaria, Quito, 1963. See Chapter VII.

[11]Camargo, Pedro Pablo. La Proteccion Juridica de los Derechos Humanos y de la Democracia en America, Mexico, 1960. See mainly Chapter IV, "El Canon Americano de la No Intervencion y la Accion Colectiva o Jurisdiccional para la tutela de los Derechos Humanos."

[12]Garcia Bauer, Carlos. Los Derechos Humanos, Editorial Universitaria, Guatemala, 1960, p. 358.

[13]Ibid., p. 358.

[14]Carrion Simbrelo, Maria. Delimitacion de Competencias entre la O.N.U. y los Organismos Regionales, Universidad Nacional, Mexico, 1964. See Chapter III, second part, "Tratado Inter-americano de Asistencia Reciproca." See also Jorge Castaneda, "Conflicto de Competencia entre las Naciones Unidas y la Organizacion de Estados Americanos, Foro Internacional, vol. 6, 1965-66, pp. 303-322.

[15]Van Wynen Thomas, Ann. Non-Intervention, The Law and its Import in the Americas, Dallas, 1956. See mainly Chapter VI, "Legality of Intervention under Particular International Law."

[16]de Conde, Alexander. "The Organization of American States: Peace and Power Politics," World Affairs Interpreter, Vol. 22, 1951-52, pp. 402-414.

[17]Dreier, John C. The Organization of American States and the Hemisphere Crisis, Council on Foreign Relations, 1962, p. 50.

[18]Hadley, Paul, "The Caracas Conference," World Affairs Interpreter, 1954-55, Vol. 25, pp. 123-139.

[19]Dreier, John C. Ibid., p. 51.

[20]Ibid., p. 52.

[21]Fabela, Isidro. La Conferencia de Caracas y la Actitud Anticommunista de Mexico, Mexico, 1954.

CHAPTER FOUR

I. INTRODUCTION

Analysis of the problems arising within the inter-American collective security system because of the Cuban case is an endless task. At the risk of incompleteness and realizing that each of these problems, especially those of a politico-economic nature, deserves to be treated at length for proper understanding of its impact on the inter-American system, we have concentrated on the analysis of one of them. Following the thread of the previous chapters, we hope that by analyzing the Cuban case regarding the application of legal collective action by the O.A.S. we can produce a more refined study of the gaps in the collective security system which inhibit its effective functioning.[1]

In doing so we will show not only the existence of the legal and political forces which the Cuban case has exacerbated, but how these two kinds of forces combine to give us an insight into possible future development of inter-American politics through the O.A.S.

The forces unleashed by the debate over the Cuban case demonstrate two points. First, the reality of inter-American relations is far different from the hypothetical consensus which seems to be assumed in the major treaties and resolutions which supposedly govern those relations. The existence of different political interests in the

inter-American system not only undermines the legality of those treaties and resolutions, primarily in matters of security, but shows that the inter-American system is not as "unique" as it purports to be.[2] This point was first introduced in Chapter I. Second, the Cuban case has forced adjustments in the internal legal structure of the inter-American collective security system, requiring the O.A.S. to refine more precisely its relationship to the United Nations in matters of security. This point was originally presented in Chapter II. These matters will be analyzed in this chapter.

Four meetings of Consultation of Ministers of Foreign Affairs have acted, as organs of consultation, to discuss the security problems with which the Cuban situation has confronted the collective security system. These problems can be divided into two major subdivisions; 1) the internal situation of Cuba which has made the Cuban Revolutionary Government unacceptable as a member of the inter-American system, and 2) the external impact which Castro's government has exerted upon the inter-American collective security system in the form of a threat to security.[3]

These two problems, or a combination of them, have been the center of discussion of the four meetings of consultation. In chronological order, the meetings have been the Seventh Meeting, held in August 1960 at San Jose, Costa Rica; the Eighth Meeting, held in January of 1962 at

Punta del Este, Uruguay; the Ninth Meeting, held in July of 1964 at Washington, D. C., and the more recent Twelfth Meeting, held in September of 1967 also at Washington, D. C. We shall review how the first two meetings of consultation dealt with the application of legal collective action as a means of solving the security problems posed by the Cuban Revolutionary Government. By doing so we will see more readily the two gaps which affect the collective security structure, as discussed in Chapters II and III.

These two gaps are: 1) the interpretation process, and 2) the politico-juridical forces obscuring the differentiation between legal collective action and intervention. On this last point it has been noted that:

> The present situation in Cuba clearly illustrates the necessity of distinguishing intervention from collective security. The need for collective security action by the Organization of American States to stop foreign (communist) intervention . . . is the principle objective of that Organization. This example makes it abundantly clear that it is sophistry to confuse intervention with collective security.[4]

Finally, in relation to those two gaps and as a conclusion to this chapter we will point out the existence of a third gap in political consensus.

II. ORIGINAL PRESENTATION OF THE CUBAN CASE: THE SEVENTH MEETING

The Seventh Meeting of Consultation, which was held in San Jose, Costa Rica from the 22nd to the 29th of August, 1960, was convened upon the request of the Peruvian government through its ambassador to the O.A.S., Juan Bautista Lavalle. Ambassador Lavalle, basing his request on Art. 39 of the O.A.S. Charter, requested the Meeting to consider "las exigencias de la solidaridad continental, la defensa del sistema regional y de los principios democraticos americanos ante las amenazas que puedan afectarlos."[5] Although there was no official reference to the Cuban Revolutionary Government, the meeting was convened to discuss the implications of the then recent pledge by Premier Nikita Kruschev to defend the Cuban government even through the use of nuclear weapons. The Meeting also considered the presence in Cuban territory of large contingents of communist personnel, mainly from the Soviet Union.

At the Meeting at San Jose, the positions taken by the various delegations had a common denominator, the preoccupation over possible Soviet exploitation of the Cuban situation for its own foreign policy objectives. Most of the delegations showed sympathy for Cuba's new social programs but showed suspicion toward its growing ties with the communist bloc.[6] It was feared that such ties would lead eventually to communization of the Cuban

Government and that the influence of international communism would present serious security problems to the inter-American collective security system. Subsequent historical developments in fact, showed that the delegations at San Jose were not in error.

The presence of Soviet personnel in Cuban territory was deemed by most of the delegations at San Jose an intervention of an extra-continental communist power in the affairs of the American republics. Such an intervention implied a violation of the major inter-American treaties and resolutions, such as the 1954 Caracas Resolution condemning the intervention of communism in the Western Hemisphere.

Some of the factors affecting the functioning of the collective security system were outlined in the preceding chapter. They became most evident in what seemed to be a personal debate between the United States and the Cuban delegations. The U. S. Secretary of State, Christian Herter, head of the U. S. delegation, challenged the Cuban delegation by saying that the Cuban government had not held elections as promised. More precisely, Mr. Herter questioned the juridical personality of the Cuban government.[7] The necessity of elections, as a guarantee of representative democracy according to the O.A.S. Charter, was stated in the "Declaration of Santiago" adopted by the Fifth Meeting of Consultation in 1959.[8]

In turn the Cuban delegation endorsed the thesis, also presented in the preceding chapter, of the disparity of power between the United States and the Latin American republics. Cuban delegate Raul Roa maintained that due to such inequality of power the O.A.S. had become an instrument controlled by the United States. It has been noted that:

> In the O.A.S., however, no state or combination of states can attempt to compete with the United States and there is no incentive to expand conflicts. Thus it is the imbalance of power in the O.A.S. that is the stabilizing force.[9]

In order to correct this imbalance of power, the Cuban delegation proposed the formation of a bloc, similar to ODECA, to offset U. S. superiority within the inter-American system.[10]

The Cuban delegation has argued continuously that the United States is trying to utilize the collective security system to overthrow the Cuban Revolutionary government. If the United States government were successful, it eventually could legalize and materialize its opposition to the Cuban government through the O.A.S. Such an action would constitute an intervention by the United States in the internal affairs of Cuba.

In subsequent inter-American conferences and United Nations debates the Cuban delegations went on to say that the U. S. Government is using the "hypothetical threat to communism" as a rationalization for either

unilateral or multilateral intervention in Cuban affairs. It has further stated that the U. S. Government has utilized the communism issue to allow for U. S. intervention in Latin America. The 1954 Guatemalan case, the 1961 Bay of Pigs invasion and the 1965 Dominican Republic situation seemed to support the Cuban delegation's point.[11]

The Cuban delegation also has stated that the United States has "multilateralized" its opposition to the Cuban Revolutionary Government through the inter-American collective security system. In this case, not only the United States but the collective security system itself would violate the non-intervention principle.[12]

The Cuban case has confused further the differentiation between intervention and legal collective action. Very plainly, the Cuban delegation maintained that collective action against Cuba is not legal, but rather political collective action. Accordingly, such political collective action, because it lacks any legality whatsoever, is a clear-cut case of intervention.[13]

It has been the purpose of the Cuban Government to obscure any possible differentiation between intervention and legal collective action. The Cuban Government believes that if other Latin American republics were convinced that legal collective action is nothing but a tool of the United States, they would oppose the collective application of sanctions. This, the Cuban Government believes, would cause

the eventual emasculation of legal collective action by the inter-American collective security system, which would leave the Cuban Government free from the fear of sanctions from that system.

At San Jose the discussions centered around the avoidance of a possible communist beach-head in the Western Hemisphere. The underlying assumption was the existence of a relationship between legal collective action and the communism issue. More exactly, how would the collective security system, through the exercise of legal collective action, deal with the security threat posed by a communist beach-head in Havana?

The Inter-American Juridical Committee has differentiated intervention from collective action by saying that the latter derives from international agreement.[14] Thus collective action taken as a result of a treaty would not constitute an intervention. Therefore if collective action is taken against the Cuban Government as a result of such a treaty, the argument of the Cuban delegation is not valid.

The difficulty however is that there is no treaty within the collective security system that explicitly legalizes collective action against the establishment of a communist government. Although the inter-American collective security system seems to oppose international communism, such opposition has not materialized in the form of a treaty of collective security. This situation is similar to the

one discussed in Chapter III when we referred to the willingness of the American republics to defend representative democracy in the abstract in contra-distinction to their reluctance to materialize this willingness in the form of a treaty.

Because the use of legal collective action is not specified in a treaty, the lack of legal foundation for action creates a vacuum which must be filled by political action.

The problem at San Jose was not the Cuban Revolution, with which many of the delegations sympathized, or even the Cuban government per se. The problem was the role of the collective security system regarding the interference of the communist bloc with the internal affairs of an American republic. The majority of the representatives at San Jose agreed that although the collective security system has no jurisdiction over the internal affairs of Cuba it does have jurisdiction over the establishment of a communist sphere of influence in the Western Hemisphere. The end result of the San Jose Meeting was the "Declaration of San Jose."[15]

Point No. 1 of the Declaration of San Jose condemned the intervention of an extra-continental power in the internal affairs of any American republic. Point No. 1 was direct advice to the Cuban Government to discontinue its growing politico-military intercourse with the Soviet

Union. On the other hand, the Cuban Government was assured throughout the Meeting that the Cuban Revolution, with its nationalistic and humanistic aspirations, could find a respectable place within the inter-American system. However, a tacit opposition existed at the San Jose Meeting against any attempt to communize the Cuban Revolution.

Point No. 2 of the Declaration of San Jose condemned the pretension of any member of the communist bloc to utilize the internal situation of any American republic for its own objectives and thus endanger the security of the inter-American system.

The Seventh Meeting of Consultation held at San Jose considered "in theory" the dangers for Hemispheric security posed by the Cuban Government but it did not attempt to define the mechanisms which could be used in case such a danger to security should materialize.

As later Meetings revealed, the politico-military ties between the Cuban Government and the communist bloc not only grew but influenced the development of a new, offensive type of Cuban foreign policy.[16] For instance, in April, 1959, the representative of Panama at the O.A.S. Council requested a meeting of consultation to consider the landing of an armed group in Nombre de Dios, Panama. The Council of the O.A.S. appointed an investigating committee which reported that the group, composed primarily of Cubans, had sailed from a Cuban port. In June, 1959, the Cuban

Government was involved in an invasion of Nicaragua. The Nicaraguan Government called for a meeting of consultation. The Cuban Government also was involved in two armed invasions of the Dominican Republic in June, 1959. The Dominican representative at the O.A.S. Council stated that the invasions had been organized in Cuban territory. Another meeting of consultation was called for. None of these requested meetings of consultation were held. Apparently they were called off because the immediate danger and the threat to security disappeared.[17]

The important point is that these invasions, which were in some way or other related to the Cuban Government, took place before the celebration of the San Jose Meeting. These invasions show that even before the San Jose Meeting an offensive Cuban foreign policy was already in operation.

After the San Jose Meeting, it became apparent that this offensive Cuban foreign policy partially resulted from the growing politico-military ties between the Cuban Revolutionary Government and the communist bloc. The coming to Cuba of Soviet intelligence personnel, the set-up of a Havana directed intelligence network, and finally the training of Latin American guerrillas at Minas del Frio, Cuba, are three examples of how Soviet influence in Cuba presented security problems to the inter-American collective security system.

The implications of the growing relationship between an offensive Cuban foreign policy and the communist

bloc are three-fold. First, the degree of the Cuban threat to the inter-American system. Second, a threat results from government-controlled Cuban institutions which are influenced, directly or indirectly, by the communist bloc. Third, the extent and scope of the Cuban subversion plans.[18]

In general the most important security problem was the apparent desire of the Cuban government to export its communist revolution through a subversive foreign policy.[19]

The inter-American collective security system recognized these complications because of a number of protests presented to the O.A.S. Council revealing Cuban subversive activities. The requests of the Panamenian, Nicaraguan and Dominican governments, for instance, reveal that the collective security system had official knowledge of specific subversive acts supported by the Cuban Government. The situation was exacerbated by the complete dependence of the Cuban Government on the Soviet Union for its internal subsistence. To this extent, a report from the U. S. House of Representatives Foreign Relations Committee has stated that:

> Communist Cuba's dependence on the Soviet Union is complete. The Castro Communist movement, although claiming to represent indigenous Latin American interests and aspirations, is in fact controlled and operated by trained professional agents from the Soviet bloc.[20]

We shall now study the problems involved in the attempts of the collective security system to apply legal collective action to the Cuban Government.

III. CUBAN SUBVERSION AND LEGAL COLLECTIVE ACTION

A. The concept of subversion and the concept of armed attack requiring self-defense.

The particular characteristic of Cuban foreign policy important to this study is its subversion strategy. Subversion seems to be a disguised form of armed attack. Long range and well-planned systematic subversion can pose, from a practical viewpoint, as serious a threat to security as an overt armed attack.

Technically, however, the concept of subversion as a serious threat to security is underestimated in the legal structure of the inter-American collective security system. There are two reasons for this. First, not until the rise of the Cuban Revolutionary Government has the collective security system been seriously threatened by a subversion strategy. Although there have been other cases of subversion, they were not as serious as the Cuban subversion. Second, the purpose of the collective security system itself is to protect its members from overt armed attack requiring self-defense. In general the nature of the inter-American collective security system is defensive, not offensive. Although the collective security system also is equipped to deal with other types of aggression, such as subversion, its flexibility is greatly curtailed. As pointed out in Chapter II, only in cases of armed attack

requiring self-defense is the inter-American collective security system free under the U. N. Charter to apply legal collective action, or punitive sanctions of a coercive nature. Legal collective action in cases of aggression other than armed attack, in this case the Cuban subversion, can not be applied by the inter-American collective security system. Arts. 51 and 53 of the U. N. Charter state that the approval of the Security Council is necessary.[21] According to the legal structure of the inter-American collective security system, the latter is not autonomous to apply legal collective action to deal with cases of subversion.

The interesting point is the fact that whenever and wherever Cuban subversion materializes, the target country can not claim a situation of "armed attack" requiring "self-defense." Subversion is covert and latent, not overt or manifest. Therefore from a technical viewpoint, subversion is not considered an armed attack requiring self-defense. Thus the target country can not base its request for the meeting of consultation on the concept of armed attack, which grants autonomy to the inter-American collective security system.

Since the concept of armed attack is not present, the inter-American collective security system may only "agree" on measures against the Cuban Government. Such measures can not be applied, however, without U. N. Security

Council approval. Once the sanctions are referred to the Security Council, the Soviet Union will veto them.

This means that 1) due to the subordination of the inter-American collective security system to the U. N., and 2) due to the technicality that subversion is not considered as serious as armed attack, the Cuban Government can proceed with its subversion without the fear of any sort of sanctions from the collective security system. Because of its legal subordination to the U. N. and because of the concept of subversion's weakness, the inter-American collective security system is not, from a strictly legal viewpoint, able to apply any sort of sanctions against the Cuban Government.

The members of the collective security system were willing, however, to utilize legal collective action to face the Cuban subversion after 1961.[22] It became apparent that collective action would have to become more flexible. In order to attain such flexibility, it was necessary for the members of the collective security system to either 1) lessen their subordination to the U. N., or 2) equate serious Cuban subversion more closely to the concept of armed attack.

Along with some others, these two changes took place in the next two meetings of consultation held to consider the Cuban case. Indeed, at the Eighth and Ninth Meeting of Consultation subordination of the inter-American collective

security system to the U. N. was partially diminished. In the Ninth Meeting, the Cuban subversion was categorized as warranting "self-defense."[23] This study will, however, only consider the Eighth Meeting.

The members of the inter-American collective security system were willing to make these innovations so as to provide more flexibility for the use of legal collective action against the Cuban Government. The need for flexibility had been clearly demonstrated by the Dominican Republic case.

IV. LESSENING OF THE U. N. SUBORDINATION

A. The Dominican Republic precedent.

The subordination of the inter-American collective security system to the U. N. was first questioned in the discussion of the Dominican Republic case in the Sixth Meeting of Consultation, held at San Jose, Costa Rica in August, 1960. The application of sanctions against the Santo Domingo Government without U. N. Security Council approval was the first step toward making legal collective action a more flexible instrument. Once this flexibility was obtained, it became easier for the collective security system to deal with the Cuban case.[24]

What occurred was that as a result of the Dominican intervention in the internal affairs of Venequela, the inter-American collective security system agreed to sever diplomatic relations with the Santo Domingo government and impose partial economic sanctions.

The Dominican ambassador to the O.A.S., Porfirio Herrera Baez, expressed his country's position, saying that the sanctions against his government were not taken under the circumstance of "armed attack." Since the concept of armed attack was not present, he claimed the sanctions required approval from the U. N. Security Council.[25]

The sanctions were applied without Security Council approval, however, thus establishing a precedent. This

precedent was the first step towards reducing the inter-American collective security system subordination to the Security Council. As a consequence, the collective security system was thereafter able to apply sanctions more freely.

The key to the understanding of the change is found in the position taken by the Chilean ambassador, Sr. Ortuzar Escobar. Ortuzar Escobar, rebutting the position of the Dominican ambassador, stated that the sanctions applied by the collective security system to the Santo Domingo government were not enforcement sanctions; therefore there was not legal need for Security Council approval.

The Chilean ambassador expanded his point by stating that only in a case involving force or violence (i.e., the use of armed forces) does a sanction become an "enforcement" sanction. The contribution of the Chilean position was to distinguish between "enforcement" and "non-enforcement" sanctions. If force is used, it becomes an enforcement sanction. But if force is not present, it becomes a non-enforcement sanction. The distinguishing feature, therefore, is whether force or violence is present, or necessitated, for the application of collective action.[26]

If the collective security system agrees on an enforcement sanction Security Council approval is needed. The collective security system therefore is not autonomous to apply "enforcement" sanctions.[27]

On the other hand, if a "non-enforcement" sanction is agreed upon, there is no necessity of approval from the

Security Council for its application. As a result of the Dominican Republic case, the collective security system assumed autonomy in the application of non-enforcement sanctions without the Security Council approval and without the presence of armed attack.

In terms of this study, it follows from the Dominican precedent that a target country can invoke the concept of subversion and expect the inter-American collective security system to apply non-enforcement sanctions to the Cuban Government. Since in this case no approval is requested from the Security Council, the Soviet Union can not veto the sanctions against the Cuban Government.

By investing itself with the right to apply non-enforcement sanctions, the inter-American collective security system was able to facilitate the use of legal collective action. This innovation was achieved, however, by negating the Security Council's jurisdiction.[28] This change in the relationship between the O.A.S. and the United Nations allowed the former to deal more positively with the Cuban case.

B. The Cuban Subversion.

How then can the inter-American collective security system deal with the Cuban subversion? How can the target countries use legal collective action to face such subversion?

It is important to remember that the target countries cannot call a meeting of consultation to consider armed attack by Cuba. In practice the Cuban Government has not, and it seems very unlikely that it will, attack any Latin American country openly. Rather, overt armed attack has been replaced by covert, but no less systematic, subversion. The purpose of that subversion, as the January, 1966, Havana Tricontinental Conference and the July-August, 1967, OLAS (Organization for Latin American Solidarity) Conference have shown, is the eventual triumph of Havana-directed rural-urban guerrillas and the overthrow of the existing Latin American governments.[29]

The Havana Tricontinental Conference took the first step to bring together all the leftist-oriented groups from the developing countries. Over eighty-two delegations from Asian, African and Latin American countries attended the meeting. The major goal of the Conference was to coordinate the efforts of the represented groups in the struggle against "imperialism." As a result of the Tricontinental Conference, the Cuban Government decided to sponsor the OLAS Conference for the purpose of uniting the efforts of the Latin American revolutionary movements. At that meeting the most notable guerrilla groups in Latin America received a new boost.[30] They are: the "Ejercito de Liberacion Nacional," operating in the Santander area of Colombia under the leadership of Fabio Vazquez; the rural-urban F.A.L.N.

of Venezuela, operating in the Bachiller mountains, whose leaders are Douglas Bravo and Luben Petkoff; and the "Fuerzas Armadas Revolucionarias," (F.A.R.) formerly directed by Luis Augusto Turcios Lima in Guatemala. The latter is now divided into two groups, one directed by Cesar Montes. Finally there is the ill-fated guerrilla group in the Nancahuazu area of Bolivia, formerly under the leadership of Ernesto Guevara.[31]

Two important meetings of consultation dealing with the Cuban case had been held during 1962 and 1964. As a result of these meetings Cuba was excluded from the inter-American system and economic sanctions were later applied. This action did not discourage the Cuban Government from holding the Tricontinental and OLAS conferences in 1966 and 1967 respectively. On the contrary, the Cuban Government increased its strategy of subversion after the Eighth Meeting of Consultation held at Punta del Este, Uruguay, and the 1964 Ninth Meeting of Consultation held at Washington, D. C.[32]

It is a paradox that instead of forcing the Cuban Government to restrain its subversion strategy, the application of sanctions resulted in renewed effort by the Cuban Government to increase its subversion strategy. The fact that the Cuban Government increased, not decreased, its subversion in Latin America after these two important meetings opens a series of important unanswered questions about

inter-American politics and the O.A.S. Does this mean that the Cuban Government had realized that such sanctions were very weak? Or, even worse, that the inter-American collective security system was either unwilling or unable to stop Cuba's strategy of subversion? The important problem is the ability of the inter-American collective security system to face threats to security and peace.[33]

So far in this chapter we have presented the framework of the Cuban subversion as related to the legal aspects of the collective security system. We shall now expand this framework by discussing the Eighth Meeting. By doing this we hope to shed some light on the internal machinery of the collective security system, its weaknesses, and its prospects for reform.[34] In the process the gaps which are the source of the failure of the system to inhibit the subversion of the Cuban Government will become obvious.

C. The Eighth Meeting of Consultation at Punda del Este, 1962.

The Eighth Meeting was called by the Colombian Government to consider "las amenazas a la paz y a la independencia de los Estados americanos que puedan surgir de la intervencion de potencias extra-continentales."[35] Although the Colombian Government was referring implicitly to the Cuban situation, it failed to say so specifically. The Meeting was convoked and held from January 23rd to the 31st, 1962, at Punta del Este, in Uruguay.

The failure of the Colombian Government to make a specific accusation against the Cuban Government was an oversight highly criticized by the Mexican and Brazilian delegations.

As the Mexican delegation pointed out, the Colombian request failed to pinpoint any specific case of aggression committed by the Cuban Government. Although the Mexican allegation was correct, the point was more childish than technical. It was an established fact in the inter-American collective security system that since April, 1959, the Cuban Government had been engaged in subversive activities, using Mexico City itself as a jumping board. The Mexican viewpoint was supported by the Brazilian delegation when it stated that: "No estamos ante un pedido concreto, definido, caraterizado de agresion, o amenaza de agresion prevista en el Tratado de Rio."[36] The second weakness of the Colombian request was its reference to the threats that <u>might</u> arise and not to the threats which had already materialized, such as those in Panama, Nicaragua, and the Dominican Republic. As the Mexican delegation stated, the Cuban Revolutionary Government could not be punished by the things it <u>might</u> do.[37]

It was well known in the Western Hemisphere that the Cuban Government <u>had</u> engaged, <u>was</u> engaged, and as shown in the future, would again <u>be</u> engaged in the support of subversive activities.

These two attacks on the Colombian format were overlooked, however, and the Meeting was convoked on the basis of Article 6 of the Rio Treaty. Since then a problem has developed concerning the ability of the collective security system to carry out sanctions agreed upon meetings of consultation convoked either under Art. 3 or Art. 6 of the Rio Treaty. Thus there is an important difference between meetings of consultation invoked under Art. 3 and those invoked under Art. 6 of the Rio Treaty.[38]

D. Difference between Articles 3 and 6 of the Rio Treaty.

A member of the collective security system can only request a meeting of consultation under Art. 3 if a case of armed attack is involved. Reciprocally, the concept of armed attack can only be invoked through Art. 3 of the Rio Treaty. On the other hand, a member-state requesting a meeting of consultation to consider any case of aggression other than armed attack must do so under Art. 6 of the Rio Treaty. The concept of subversion thus can only be invoked through Art. 6 of the Rio Treaty. This simply means that according to the legal structure, the sanctions agreed upon under Art. 3 of the Rio Treaty can be applied by the inter-American collective security system without the approval of the U. N. Security Council. On the other hand, the sanctions agreed upon under Art. 6 of the Rio Treaty (involving cases

of aggression which are not armed attack) cannot be applied without the approval of the Security Council.

Therefore, a target country calling for a meeting of consultation to consider the Cuban subversion under the Rio Treaty must base its request upon Art. 6. Since, according to the Rio Treaty, the Cuban subversion can only be dealt through meetings of consultation based on Art. 6, it is implicit in the existing legal structure, that the agreed sanctions must have the Security Council approval. Realizing that the Soviet Union will veto such sanctions, it is senseless to deal with the Cuban subversion through Art. 6 of the Rio Treaty. However, in the absence of armed attack there is no alternative.

When in the Eighth Meeting of Consultation Colombia invoked Art. 6 of the Rio Treaty to consider the Cuban subversion, some Latin American governments, (Mexico, for one) pointed out a priori that any sanctions agreed upon would require the Security Council's approval. Because of the Soviet Union veto at the Security Council, this means that no legal collective action whatsoever can be taken against the Cuban Government.[39]

Article 6 of the Rio Treaty says that whenever the political independence of any American state is endangered by an aggression which is not armed attack, such as subversion, "the Organ of Consultation shall meet immediately in order to agree on the measures which must be taken in

cases of aggression . . ." Although the meeting of consultation can "agree" on the sanctions against the Cuban Government, Art. 53 of the U. N. Charter states that no punitive sanction can be applied by the inter-American collective security system without Security Council approval. Art. 53 of the U. N. does not distinguish between "enforcement" and "non-enforcement" sanctions as the inter-American collective security system does, since the Dominican case. Art. 53 clearly says that the inter-American collective security system can not apply, without Security Council approval, either enforcement or non-enforcement sanctions unless the sanctions are applied, according to Art. 51 of the U. N. Charter, in response to armed attack.[40]

We have tried to represent the legal framework of Cuban subversion and the relationship of the collective security system to the Security Council. From a strictly legal position, the key point is that the Soviet Union veto will never allow the application of sanctions, whether there are "enforcement" or "non-enforcement" sanctions, against the Cuban Revolutionary Government. Therefore, if the inter-American collective security system wants to apply sanctions against the Cuban Government, it will have to change its relationship to the Security Council in order to avoid the Soviet Union veto. The first step toward this change, as we have pointed out, took place with the Dominican Republic case.

After the Dominican case, it became apparent that the collective security system can in actuality apply "non-enforcement" type sanction to the Cuban Government under Art. 6 of the Rio Treaty. This can be done without the Security Council approval, therefore, avoiding the Soviet Union veto.[41]

Due to the Dominican precedent, a Latin American country which is the target of the Cuban subversion can call a meeting of consultation under Art. 6 of the Rio Treaty and expect the application of non-enforcement sanctions without the fear of the Soviet Union veto. This process seems to be the most practical one for the inter-American collective security system to use in dealing with Cuban subversion. It involves three factors; 1) convocation, by the target country, of a meeting of consultation under Art. 6 of the Rio Treaty; 2) agreement on non-enforcement sanctions; 3) the avoidance of the Soviet Union veto.

We must now review how the collective security system applied, during the Eighth Meeting, a "non-enforcement" type sanction (exclusion from the system) to the Cuban Government without Security Council approval.

E. The Eighth Meeting: the political vs. the legal group.

At the Eighth Meeting at Punta del Este, called by Colombia on the basis of Art. 6 of the Rio Treaty, the Cuban Government was deemed "incompatible" as a member of the

inter-American system and was therefore excluded. As a result of Cuba's exclusion, an important legal adjustment which heavily damaged the legal underpinnings of the collective security system took place. Consequently, it became evident that politics, not legality, has the final word in deciding the direction of the entire collective security system.[42]

The delegations at Punta del Este split into two groups. The first, or soft line group, opposed any sanctions whatsoever against the Cuban Government. The second, or hard line group, favored the application of sanctions. These two groups were actually separated by a difference in the interpretation process, as stated in Chapter II.

For the soft line group, the threats posed by the Cuban subversion were not interpreted as a serious challenge to their security. Politically speaking, they saw then no necessity of supporting the application of sanctions against the Cuban Government. The soft line group realized that given the imperfections of the legal structure, there was very little the inter-American collective security system could do against the Cuban Government. The soft line group approached the Cuban case from a strictly orthodox legal position. Their interpretation of the Cuban case was, therefore, a legal interpretation. Legality for the soft line group meant the opposition to the application of sanctions against the Cuban Government.

Unlike the soft line group, the hard line group interpreted the Cuban case as a serious challenge to their security. Obviously, then, there was a big gap between the interpretations of the two groups as to the role of the collective security system regarding the Cuban case. The hard line group, realizing that the soft line group was right in assuming that very little could be done from a strictly legal position, decided to face the Cuban case from a more practical position, a political position. Their interpretation was, therefore, not a legal but a political interpretation. Politics for this group meant the willingness to apply sanctions against the Cuban Government using the results of the Dominican case.[43]

The soft line group wanted a discussion of the Cuban case in legal terms while the hard line did not.

Since the primary interest of the hard liners at Punta del Este was to agree to apply sanctions against the Cuban Government, they avoided falling into the trap of the legal imperfections of the system. Instead they followed a political approach to the Cuban case. The hard line group emerged under the leadership of the United States and Colombian delegations. The other delegations sharing, partially or wholly, the hard line "ideology" were Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Peru and Venezuela. After long debate the Eighth Meeting of Consultation decided to:

1) condemn the communist offensive in the American continent; 2) create a special consultative commission for security; 3) exclude the Cuban Government from the Inter-American Defense Board; 4) immediately suspend any traffic of weapons or other articles of strategic importance into Cuba; and, 5) exclude the Cuban Government from the inter-American system, on the grounds that any American country adhering to a communist form of government is incompatible with the inter-American system.[44]

Since Cuba's loss of its membership in the O.A.S., an important and far-reaching debate has developed among American jurists questioning the legality of the O.A.S. power to exclude a member-state. From a technical viewpoint, the O.A.S. does not have the power to exclude a member because no exclusion clause appears in either the O.A.S. Charter or the Rio Treaty.

The fact that Cuba was excluded means the triumph of politics over legality during the Eighth Meeting of Consultation. This represents the triumph of the hard line over the soft line group.

Both groups were able to manipulate important legal norms and provisions in order to rationalize their position toward the exclusion of Cuba. As a result of such manipulation, an important readjustment took place in the legal structure of the inter-American collective security system, creating a vacuum which eventually was filled by political forces. A quick review of this readjustment follows.[45]

F. Legal Position of the Hard Line and Soft Line Groups.

The soft line group, headed by the Mexican delegation, maintained that the exclusion of the Cuban Government is not legally sanctioned by either the Rio Treaty or the O.A.S. Charter. Thus the Eighth Meeting lacked any legal base to exclude the Cuban Government. The soft line group thus maintained, through the voice of the Mexican delegation, that Cuba's exclusion was illegal. Furthermore, they stated that for Cuba's exclusion to be legal, either the O.A.S. Charter or the Rio Treaty would have to be amended to include an exclusion clause. From a strictly legal viewpoint, the soft line group was correct.[46]

The position of the soft line group has remained firm since 1962. However, until the present time, the Mexican Government has been the only one to continue questioning the legality of Cuba's exclusion. This criticism has taken the form of critiques appearing in official government publications and primarily in articles published by "El Colegio de Mexico."[47]

The Mexicans maintain that since the O.A.S. is an international organization in whose governing treaties the exclusion clause does not appear, the O.A.S. has no power whatsoever to force a member-state's exclusion. In this case exclusion of the Cuban Government must be self-exclusion; that is, it is up to the Cuban Government to retire

voluntarily from the O.A.S. The Mexicans have explained this situation using the principle of residual jurisdiction (principio de competencia residual).

This principle says that the O.A.S., as an international organization, can only exercise the powers appearing in its governing treaties. All other rights or powers which do not appear in the O.A.S. treaties fall under the "residual jurisdiction" of its member-states. Therefore, because the exclusion clause is not included in either the O.A.S. Charter or the Rio Treaty, exclusion is voluntary, because it falls under the Cuban Government's residual jurisdiction.[48] The Mexican-supported argument of "residual jurisdiction" to explain the illegality of Cuba's exclusion is valid. The Mexicans have further stated that the illegality of Cuba's exclusion has made the O.A.S. too strong. As Castaneda has commented:

> Otorgar seme jantes facultades a la OEA, cuya caracteristica mas saliente es el peculiar y abrumador desequilibrio de las fuerzas que la integran, significaria legitimar una situacion de peligro permanente para la soberania de los paises latinoamericanos.[49]

According to the Mexicans such misinterpretation has produced a readjustment in the legal bases of the collective security system which has transformed the O.A.S. into an instrument with coercive and punitive powers. Corominas has commented that:

> La tendencia a a aplicar medidas y sanciones a un Estado sin que se hayan dado los presupuestos juridicos necesarios . . . es una postura peligrosa para el solidarismo americano.[50]

The decision of the Eighth Meeting to exclude the Cuban Government without the necessary legal base, indicates that the Cuban case was interpreted politically, not legally. Thus the hard line group championed its political cause over the legal cause of the soft line group.

Interesting enough, the politically oriented hard line group was able to support Cuba's exclusion with strong legal bases.

The legal arguments proposed by the hard line group centered around two points. One was the doctrine of unforeseen conditions proposed by the United States delegation after the Eighth Meeting. As they maintained, the security problems posed by the Cuban Government have been an "unforeseen condition" or problem which requires the use of new instruments for its solution. Thus the collective security system is implicitly empowered to appropriately deal with such new condition.[51]

Under this argument, the United States delegation seemed to realize that although from a strictly legal viewpoint the O.A.S. had no power to exclude Cuba, such exclusion was not necessarily illegal if it were taken in response to an unforeseen condition. The United States delegation maintained, as the leader of the hard line group,

that the Cuban Government presented a new security problem which demanded new approaches for its solution.

The other legal point of the hard line group was introduced by the Uruguayan delegation, which maintained that the Cuban Government's exclusion was an extension of the measures which appear in Art. 8 of the Rio Treaty. Such an extension was an attempt to defend the governing treaties of the O.A.S. rather than to reject them in favor of the member-state's jurisdiction, as proposed by the Mexican idea of "residual jurisdiction."

The Uruguayan position derives from the Roman law idea of "ut res magis valeat quam pereat" or norm of effective interpretation (norma de interpretacion efectiva). This position was very similar to the United States' doctrine of unforeseen conditions in that both tended to vitalize the role of the O.A.S. facing security problems.[52]

The Uruguayan position has been defended by the head of the Colombian delegation to the Eighth Meeting, the jurist Jose J. Caicedo Castilla. He has maintained that the Eighth Meeting was able to apply measures other than those listed in Art. 8 of the Rio Treaty (i.e., exclusion of the Cuban Government) because of the presence of new security problems. The Colombian position was a combination of the United States' doctrine of unforeseen conditions and the Uruguayan norm of effective interpretation.[53]

The core of the legal arguments offered by the hard line group was explained through the unforeseen condition

of the Cuban threat and the effective interpretation of the O.A.S. treaties. Obviously such legal interpretation was utilized by the hard line group to support its more immediate goal of opposing the Cuban Government, which led ultimately to the exclusion of the Cuban Government.

The fact that both groups were able to find strong legal backing for their mutually exclusive positions toward the Cuban case indicates the flexibility of the collective security system legal structure as to accommodate contending, and even opposing, positions.

V. POLITICAL CONSEQUENCES OF CUBA'S EXCLUSION

Cuba's exclusion from the inter-American system signaled the triumph of the hard line group at the Eighth Meeting at Punta del Este in 1962. Due to the diverse legal positions presented at this Meeting, legality is no longer considered the prevailing tool in the handling of security problems. The legal tool rather was replaced by the more practical and efficient political tool.

It was shown at Punta del Este that a strictus sensus legal approach would not produce sanctions against the Cuban Government. On the one hand, the Cuban threat was recognized as a serious security problem.

The hard line group, however, was willing to sacrifice strict legality in order to make the collective security system a more viable mechanism.

The triumph of the doctrine of unforeseen conditions and the norm of effective interpretation over the Mexican-supported residual jurisdiction idea is significant. Cuba's exclusion from the inter-American system, in spite of the absence of an exclusion clause, marked an adjustment which reduced the legal rigidity of the system.

The replacement of legality by political factors marks a turning point in the history of the inter-American collective security system.[54] The presence of such political influences, embodied in the "unforeseen condition" and

"effective interpretation" ideas, has established a new approach to the solution of security problems.[55] This new political interpretation approach, by substituting the former legal interpretation approach, has vitalized the security problem-solving ability of the inter-American collective security system. The response of the system during the Cuban missile crisis and the more recent 1965 Dominican situation showed the new flexibility of the system.

In general, the political interpretation approach is responsible for the legal readjustment of the collective security system just outlined, as well as for the system's changed relationship with the U. N. Security Council. The political interpretation approach was reinforced during the Dominican case, when it was agreed to apply sanctions against the Santo Domingo Government without the approval of the Security Council.

A clear result of the new political interpretation approach was to show the subordination of formal legal norms to politics within the inter-American collective security system. This subordination has made political-diplomatic bargaining the ultimate determinant in directing the actions of the collective security system.[56]

The new political approach is a tool used by the member-states of the inter-American system to control the

decision-making processes of the Council of the O.A.S. and the organs of consultation. These member-states form the political interpretation group.

This group is not static but rather its membership shifts with the particular security problem under consideration. Specifically, the political interpretation group works by forming a political consensus prior to the voting procedure (two-thirds majority votes of the member-states present) in the organs of consultation.

VI. THE POLITICAL CONSENSUS

We listed the countries which during the Eighth Meeting formed the political interpretation group. In order to implement its political decision to exclude Cuba from the inter-American system, this group needed a two-thirds majority vote. This means that a consensus must be built prior to the voting. The political interpretation group's ability to achieve its political objectives depends on its ability to form such a consensus. The political consensus then controls the inter-American collective security system. It is the third major gap in the system which this chapter has tried to point out.[57] A more detailed study of this third gap follows.

We have seen that during the Eighth Meeting of Consultation the member-states of the collective security system split into the hard line, or political interpretation group, and the soft line, or legal interpretation group. At that Meeting the United States Government became the major exponent of the hard line group and the Mexican Government became the major exponent of the soft line group. That is, the United States and the Mexican Government, two leading members of the inter-American system, have viewed the role of the collective security system toward Cuba in completely different terms. The polarized, and to some

extent incompatible, positions of these two important governments have placed them at different ends of a political spectrum. The rest of the Latin American countries fall somewhere in the middle, although their "interpretations" of the Cuban case have been also quite dissimilar between them. The question which we pose is then, what does this difference in interpretation mean for the inter-American system? More precisely, what are its implications for the collective security system?[58]

Politically speaking, the United States Government's interpretation of the Cuban case is manifested in the support of sanctions against the Cuban Government. The Mexican Government's interpretation is manifested in the opposition to apply sanctions against the Cuban Government. This difference in the political interpretation between the United States and Mexico may be easily discarded by saying that the former feels that its interests are affected by Cuban subversion while the latter does not.[59]

Legally speaking, however, the implications of such a difference in interpretation are more subtle and complicated. As pointed out in the analysis of the Rio Treaty in Chapter II, the member-states of the collective security system are obligated to carry out the sanctions (except according to Art. 20 of Rio, when armed forces are required) against the Cuban Government agreed upon by the organ of consultation. However, due to the diverse interpretations

of the Cuban case, not all the members (i.e., Mexico) feel a legal responsibility to fulfill their obligations. The Rio Treaty maintains, however, that the legal responsibility of the members of the collective security system to implement its decisions is a duty. But as the difference between the hard and soft line has shown, interpretation of this legal responsibility has been based on the way in which Cuban subversion is interpreted politically. This political interpretation derives from the individual interests of the member-states rather than from collective interests of the inter-American collective security system as outlined in the Rio Treaty. What is the binding power of the Rio Treaty? Has the Rio Treaty become meaningless?

For example, the Mexican Government does not feel affected politically by the Cuban subversion. It, therefore, feels no legal responsibility to apply the measures upon which the majority of the members of the collective security system have agreed.[60] At present the Mexican Government is the only member of the inter-American collective security system maintaining diplomatic relations with the Cuban Government.

The discussion of the hard line vs. the soft line group shows that the political interpretation of the Cuban case directs and shapes its legal interpretation. For instance, at the more recent Twelfth Meeting of Consultation called at the request of the Venezuelan Government to

consider the Cuban subversion and held in Washington, D. C., September, 1967, an acute difference in interpretation divided the Mexican from the Argentine delegation. The Argentine Government, a political enemy of the Cuban Government, was able to base support for collective action against the Cuban Government on "legal" grounds. The Mexican Government, a political friend of the Cuban Government, was able to oppose such collective action on equally "legal" grounds.

This is a clear-cut case of the influence of politics over formal law. This example also shows the flexibility of the collective security system legal structure to "accommodate" incompatible legal positions.

Again, according to the Rio Treaty the Cuban subversion must be dealt with through the collective security system and solved in the the same way. The inter-American collective security system has dealt with the Cuban case but has failed to solve it. This study suggests, therefore, that legality has been used as a two-edged knife. On the one hand, legality has been used by the soft line group to avoid sanctions against Cuba. And on the other hand, there is the equally legal commitment to suppress the Cuban subversion. This is the contradiction of the legal structure of the inter-American collective security system.

To fulfill the legal commitment to face the Cuban subversion it was necessary to by-pass or re-interpret

legality, utilizing political pressures. Thus the political interpretation group and the concept of political consensus emerged. The wide divisions in the interpretation of the Cuban case have shown that collective security within the inter-American system has not derived from legal, but from political consensus.[61]

As to the future role of the inter-American collective security system in the Cuban case, the different positions taken concerning the application of further sanctions depends upon the type of political consensus formed. Once the political consensus has been formed, the two-thirds majority vote will work either to apply or oppose sanctions against the Cuban Government. The legal machinery will be flexible enough to allow each of the member-states to present valid, legal provisions rationalizing its respective political position.

After the casting of the two-thirds vote, the political consensus has been "officially" formed. To accomplish this, the more powerful members of the inter-American system must use their influence.[62]

For instance, during the Eighth Meeting at Punta del Este the resolution to exclude Cuba was passed by a bare two-thirds majority. The Haitian Government, which previously had opposed the exclusion of the Cuban Government, changed her position. This shift came "apparently as a result of a deal with the United States under which it would later receive a $13,000,000 loan."[63]

This is an example of the political consensus in its process of formation. The Haitian fluctuation reveals how easily the political interpretation may shift. But more important it shows how the United States Government can use its resources to achieve a political consensus in accord with its own foreign policy objectives.

An appropriate response from the inter-American collective security system to the Cuban subversion requires the formation of some kind of political consensus. Since the United States has shown its ability to impose at least one form of political consensus, it is the single most important actor in the process. The ability of the inter-American collective security system to face the Cuban subversion in the future and eventually solve the Cuban case depends, therefore, upon the willingness, and degree of success, of the United States Government to form the appropriate political consensus.

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SOME PERSONAL CONCLUSIONS

As far as the inter-American collective security system is concerned, three aspects are still obscure.

First, there is no accepted differentiation between intervention and collective action. The idea of collective security seems to be incompatible with the principle of non-intervention in the inter-American system. If collective action is still the preferred instrument for the solution of serious security problems, this incompatibility must either disappear or be changed. If not, collective action will become ineffective.

Second, there is no agreement among the members of the inter-American collective security system as to the seriousness of communist subversion. Their position toward the communist subversion must be defined.

Thirdly, the inter-American collective security system's relationship to the U. N. in matters of security should be re-studied. By applying sanctions against the Dominican Republic in 1960 and later against the Cuban government the jurisdiction of the U. N. Security Council was violated. If the members of the inter-American collective security system believe that the violation is necessary for the effective application of sanctions, that should be said without inhibition. Accordingly, the proper steps should be taken to reorganize its subordination to the U. N.

As far as the solution of the Cuban situation is concerned, the U. S. Government has the final word.

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